

**FINAL AMENDED APPENDIX 2**  
**RESTYLED AND AMENDED RULE 31; PROPOSED**  
**AMENDED RULES 32, 41, 43, 46-51, 54-58, 60, 63, 66-67,**  
**75-76; AND PROPOSED NEW RULE 33.1**  
**CLEAN AND MARKUP**

**Final Amended Appendix 2A: Restyled and Amended Rule 31; Proposed  
Amended Rules 32, 41, 43, 46-51, 54-58, 60, 63, 66-67, 75-76; and Proposed  
New Rule 33.1 (Clean)**

**Rule 31. Supreme Court Jurisdiction<sup>1</sup>**

**(a) Jurisdiction.** The Arizona Supreme Court has jurisdiction over any person or entity engaged in the authorized or unauthorized “practice of law” in Arizona, as that phrase is defined in (b). The Arizona Supreme Court also has jurisdiction over any ABS who is licensed pursuant to Rule 31.1(c) and ACJA 7-209.

**(b) Definition.** “Practice of law” means providing legal advice or services to or for another by:

- (1) preparing or expressing legal opinions to or for another person or entity;
- (2) representing a person or entity in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration or mediation;
- (3) preparing a document, in any medium, on behalf of a specific person or entity for filing in any court, administrative agency, or tribunal;
- (4) negotiating legal rights or responsibilities on behalf of a specific person or entity; or
- (5) preparing a document, in any medium, intended to affect or secure a specific person’s or entity’s legal rights.

**Rule 31.1. Authorized Practice of Law.**

**(a) Requirement.** A person may engage in the practice of law in Arizona, or represent that he or she is authorized to engage in the practice of law in Arizona, only if:

- (1) the person is an active member in good standing of the State Bar of Arizona under Rule 32; or
- (2) the person is specifically authorized to do so under Rules 31.3, 38, or 39.

**(b) Lack of Good Standing.** A person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status,

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<sup>1</sup> Rules 31 through 31.3 as presented in this appendix represents the restyling of Rule 31 as discussed in the petition. Underlined content represents proposed amendments related only to the regulation of alternative business structures (ABSs) and limited license legal practitioners (LLLPs).

is not a member in good standing of the State Bar of Arizona under Rule 31.1(a)(1).

**(c) Alternative Business Structure (ABS).** An entity that includes nonlawyers who have an economic interest or decision-making authority as defined in ACJA 7-209 may employ, associate with, or engage a lawyer or lawyers to provide legal services to third parties only if:

(1) it employs at least one person who is an active member in good standing of the State Bar of Arizona under Rule 32 who supervises the practice of law under ER 5.3;

(2) it is licensed pursuant to ACJA § 7-209; and

(3) legal services are only provided by persons authorized to do so and in compliance with the Rules of Supreme Court.

**Rule 31.2. Unauthorized Practice of Law.** Except as provided in Rule 31.3, a person, entity, or ABS who is not authorized to practice law in Arizona under Rule 31.1(a), (c) or Rule 31.3 must not:

(a) engage in the practice of law or provide legal services in Arizona; or

(b) use the designations “lawyer,” “attorney at law,” “counselor at law,” “law,” “law office,” “J.D.,” “Esq.,” “alternative business structure (ABS)” or other equivalent words that are reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law or provide legal services in Arizona.

**Rule 31.3. Exceptions to Rule 31.2.**

**(a) Generally.**

(1) Notwithstanding Rule 31.2, a person or entity may engage in the practice of law in a limited manner as authorized in Rule 31.3(b) through (e), but the person or entity who engages in such an activity is subject to the Arizona Supreme Court’s jurisdiction concerning that activity.

(2) A person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status, may not engage in any of the activities specified in this Rule 31.3 unless this rule authorizes a specific activity.

(3) An ABS whose license has been suspended or revoked may not engage in any of the activities specified in this rule, except an ABS whose license has been suspended may engage in activities as expressly authorized by judgment or order of this court, the presiding disciplinary judge, or a hearing panel.

**(b) Governmental Activities and Court Forms.**

(1) ***In Furtherance of Official Duties.*** An elected official or employee of a governmental entity may perform the duties of his or her office and carry out the government entity's regular course of business.

(2) ***Forms.*** The Supreme Court, Court of Appeals, superior court, and limited jurisdiction courts may create and distribute forms for use in Arizona courts.

**(c) Legal Entities.**

(1) ***Definition.*** "Legal entity" means an organization that has legal standing under Arizona law to sue or be sued in its own right, including a corporation, a limited liability company, a partnership, an association as defined in A.R.S. §§ 33-1202 or 33-1802, a trust, or a governmental or tribal entity.

(2) ***Documents.*** A legal entity may prepare documents incidental to its regular course of business or other regular activity if they are for the entity's use and are not made available to third parties.

(3) ***Justice and Municipal Courts.*** A person may represent a legal entity in a proceeding before a justice court or municipal court if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(4) ***General Stream Adjudication Proceeding.*** A person may represent a legal entity in superior court in a general stream adjudication proceeding conducted under A.R.S. §§ 45-251 et seq. (including a proceeding before a master appointed under A.R.S. § 45-255) if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the proceeding;

(C) such representation is not the person's primary duty to the entity but is secondary or incidental to other duties related to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the corporation or association (other than receiving reimbursement for costs).

(5) ***Administrative Hearings and Agency Proceedings.*** A person may represent a legal entity in a proceeding before the Office of Administrative Hearings, or before an Arizona administrative agency, commission, or board, if:

(A) the person is an officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the particular proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(6) ***Arizona Corporation Commission.*** A person may represent a legal entity in a proceeding before the Arizona Corporation Commission ("Commission") if the representation complies with subsection (c)(5). Additionally, a person with expertise in the field of public utility regulatory compliance, public utility accounting or finance, public utility engineering, railroad engineering or safety, or pipeline engineering or safety may prepare, submit, or file with the Commission on the entity's behalf a tariff, rate schedule, engineering report, or other technical or financial document within the person's field of expertise.

(7) ***Exception.*** Despite Rule 31.3(c)(3) through (c)(5), a court, the hearing officer, or the officer presiding at the agency or commission proceeding, may order the entity to appear only through counsel if the court or officer determines that the person representing the entity is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

**(d) Tax-Related Activities and Proceedings.**

(1) A person may prepare a tax return for an entity or another person.

(2) A certified public accountant or other federally authorized tax practitioner (as that term is defined in A.R.S. § 42-2069(D)(1)) may:

(A) render individual and corporate financial and tax advice to clients and prepare tax-related documents for filing with governmental agencies;

(B) represent a taxpayer in a dispute before the State Board of Tax Appeals if the amount at issue is less than \$25,000; and

(C) practice before the Internal Revenue Service or other federal agencies if authorized to do so.

(3) A property tax agent (as that term is defined in A.R.S. § 32-3651), who is registered with the Arizona State Board of Appraisal under A.R.S. § 32-3642, may practice as authorized under A.R.S. § 42-16001.

(4) A person may represent a party in a small claim proceeding in Arizona Tax Court conducted under A.R.S. §§ 12-161 et seq.

(5) In any tax-related proceeding before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Arizona Department of Child Safety, or any county, city, or town taxing or appeals official, a person may represent a taxpayer if:

(A) the person is:

(i) a certified public accountant,

(ii) a federally authorized tax practitioner (as that term is defined in A.R.S. § 42-2069(D)(1)); or

(iii) in matters in which the amount in dispute, including tax, interest and penalties, is less than \$5,000, the taxpayer's duly appointed representative; or

(B) the taxpayer is a legal entity (including a governmental entity) and:

(i) the person is full-time officer partner, member, manager, or employee of the entity;

(ii) the entity has specifically authorized the person to represent it in the proceeding;

(iii) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(v) the person is not receiving separate or additional compensation for such representation (other than receiving reimbursement for costs).

**(e) Other.**

(1) ***Children with Disabilities.*** In any administrative proceeding under 20 U.S.C. §§ 1415(f) or (k) regarding any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a child with a disability or suspected disability, a person may represent a party if:

(A) the hearing officer determines that the person has special knowledge or training with respect to the problems of children with disabilities; and

(B) the person is not charging a fee for representing the party (other than receiving reimbursement for costs).

Despite these provisions, the hearing officer may order the party to appear only through counsel or in some other manner if he or she determines that the person representing the party is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

(2) ***Department of Fire, Building and Life Safety.*** In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, a person may represent a party if:

(A) the party has specifically authorized the person to represent the party in the proceeding; and

(B) the person is not charging a fee for the representing the party (other than receiving reimbursement for costs).

(3) ***Fiduciaries.*** A person licensed as a fiduciary under A.R.S. § 14-5651 may perform services in compliance with Arizona Code of Judicial Administration § 7-202 without acting under the supervision of an attorney authorized under Rule 31.1(a) to engage in the practice of law in Arizona. Despite this provision, a court may suspend the fiduciary's authority to act without an attorney if it determines that lay representation is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

(4) ***Legal Document Preparers and Limited License Legal Practitioners.*** Certified legal document preparers and limited license legal practitioners may perform services in compliance with the Arizona Code of Judicial Administration. Disbarred or suspended attorneys may only be certified as a legal document preparer or licensed as a limited license legal practitioner if approved by the Supreme Court.

**(5) *Mediators.***

(A) A person who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona may prepare a written agreement settling a dispute or file such an agreement with the appropriate court if:

(i) the person is employed, appointed, or referred by a court or government entity and is serving as a mediator at the direction of the court or a governmental entity; or

(ii) the person is participating without compensation in a nonprofit mediation program, a community-based organization, or a professional association.

(B) Unless specifically authorized in Rule 31.3(e)(5)(A), a mediator who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona and who prepares or provides legal documents for the parties without attorney supervision must be certified as a legal document preparer in compliance with the Arizona Code of Judicial Administration § 7-208.

**(6) *Nonlawyer Assistants and Out-of-State Attorneys.***

(A) A nonlawyer assistant may act under an attorney's supervision in compliance with ER 5.3 of the Arizona Rules of Professional Conduct. This exception is not subject to the restriction in Rule 31.3(a)(2) concerning a person who is currently suspended or has been disbarred from the State Bar of Arizona or is currently on disability inactive status.

(B) An attorney licensed in another jurisdiction may engage in conduct that is permitted under ER 5.5 of the Arizona Rules of Professional Conduct.

**(7) *Personnel Boards.*** An employee may designate a person as a representative who is not necessarily an attorney to represent the employee before any board hearing or any quasi-judicial hearing dealing with personnel matters, but no fee may be charged (other than for reimbursement of costs) for any services rendered in connection with such hearing by any such designated representative who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona.

**(8) *State Bar Fee Arbitration.*** A person may represent a legal entity in a fee arbitration proceeding conducted by the State Bar of Arizona Fee Arbitration Committee, if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;



(B) the entity has specifically authorized the person to represent it in the particular proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

## **Rule 32. Organization of State Bar of Arizona.**

**(a) State Bar of Arizona.** The Supreme Court of Arizona maintains under its direction and control a corporate organization known as the State Bar of Arizona.

1. *Practice of law.* [[No change]]

2. *Mission.* The State Bar of Arizona exists to serve and protect the public with respect to the provision of legal services and access to justice. Consistent with these goals, the State Bar of Arizona seeks to improve the administration of justice and the competency, ethics, and professionalism of lawyers and those engaged in the authorized practice of law in Arizona. This Court empowers the State Bar of Arizona, under the Court's supervision, to:

A. organize and promote activities that fulfill the responsibilities of the legal profession and its members to the public;

B. promote access to justice for those who live, work, and do business in this state;

C. aid the courts in the administration of justice;

D. assist this Court with the regulation and discipline of persons engaged in the practice of law; assist the Court with the regulation and discipline of alternative business structures (ABS) and limited license legal practitioners (LLLP); foster on the part of those engaged in the practice of law ideals of integrity, learning, competence, public service, and high standards of conduct; serve the professional needs of its members; and encourage practices that uphold the honor and dignity of the legal profession;

E. conduct educational programs regarding substantive law, best practices, procedure, and ethics; provide forums for the discussion of subjects pertaining to the administration of justice, the practice of law, and the science of jurisprudence; and report its recommendations to this Court concerning these subjects.

**(b) Definitions.** Unless the context otherwise requires, the following definitions shall apply to the interpretation of these rules relating to admission, discipline, disability and reinstatement of lawyers, ABSs, and LLLPs:

1. “Board” [[No change]]

2. “Court”[[No change]]

3. “Discipline” means those sanctions and limitations on members and others and the practice of law provided in these rules. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so

requires. Discipline includes sanctions and limitations on ABSs as provided in these rules and ACJA 7-209 and LLLPs as provided in these rules and ACJA 7-210.

4. “Discipline proceeding” and “disability proceeding” [[No change]]

5. “Member” [[No change]]

6. “Non-member” [[No change]]

7. “Respondent” means any person, ABS, or LLP subject to the jurisdiction of the court against whom a charge is received for violation of these rules or ACJA 7-209 or ACJA 7-210.

8. “State bar” [[No change]]

**(c) Membership.**

1. *Classes of Members.* Members of the state bar shall be divided into ~~five~~ six classes: active, inactive, retired, suspended, judicial, and affiliate. Disbarred or resigned persons are not members of the bar.

2. *Active Members.* Every person licensed to practice law in this state is an active member except for persons who are inactive, retired, suspended, ~~or~~ judicial, or affiliate members.

3. *Affiliate Members.* Limited license legal practitioners (LLLPs) are affiliate members for purposes of regulation and discipline under these rules.

4. *Admission, Licensure and Fees.* Upon admission to the state bar or licensure as an LLLP, a person:

(i) shall pay a fee as required by the supreme court, which shall include the annual membership fee for members of the state bar. If a person is admitted or licensed on or after July 1 in any year, the annual membership fee shall be reduced by one half.

(ii) Upon admission to the state bar, a lawyer applicant shall also, in open court, take and subscribe an oath to support the constitution of the United States and the constitution and laws of the State of Arizona in the form provided by the supreme court.

(iii) All members shall provide to the state bar office a current street address, e-mail address, telephone number, any other post office address the member may use, and the name of the bar of any other jurisdiction to which the member may be admitted. Any change in this information shall be reported to the state bar within thirty days of its effective date. The state bar office shall forward to the court, on a quarterly basis, a current list of membership of the bar.

5. *Inactive Members.* [[No change to text]]

6. *Retired Members.* [[No change to text]]

7. *Judicial Members.* [[No change to text]]

8. *Membership Fees.* An annual membership fee for active members, inactive members, retired members, judicial members, and affiliate members shall be established by the board with the consent of this court and shall be payable on or before February 1 of each year. No annual fee shall be established for, or assessed to, active members who have been admitted to practice in Arizona before January 1, 2009, and have attained the age of 70 before that date. The annual fee shall be waived for members on disability inactive status pursuant to Rule 63. Upon application, the Chief Executive Officer/Executive Director may waive all or part of the dues of any other member for reasons of personal hardship. Both the grant or denial of an application shall be reported to the board. Denial of a personal hardship waiver shall be reviewed by the board. The board should take all steps necessary to protect private information relating to the application.

9. *Computation of Fee.* The annual membership fee shall be composed of an amount for the operation of the activities of the State Bar and an amount for funding the Client Protection Fund, each of which amounts shall be stated and accounted for separately. Each active and inactive member, who is not exempt, and each affiliate member shall pay the annual Fund assessment set by the Court, to the State Bar together with the annual membership fee, and the State Bar shall transfer the fund assessment to the trust established for the administration of the Client Protection Fund. The State Bar shall conduct any lobbying activities in compliance with *Keller v. State Bar of California*, 496 U.S. 1 (1990). Additionally, a member who objects to particular State Bar lobbying activities may request a refund of the portion of the annual fee allocable to those activities at the end of the membership year.

10. *Allocation of fee.* Upon payment of the membership fee, each individual lawyer member shall receive a bar card and each LLP shall receive a certificate of licensure, issued by the board evidencing payment. All fees shall be paid into the treasury of the state bar and, when so paid, shall become part of its funds, except that portion of the fees representing the amount for the funding of the Client Protection Fund shall be paid into the trust established for the administration of the Client Protection Fund.

11. *Delinquent Fees.* A fee not paid by the time it becomes due shall be deemed delinquent. An annual delinquency fee for active members, inactive members, retired members, judicial members, and affiliate members shall be established by the board with the consent of this court and shall be paid in addition to the annual

membership fee if such fee is not paid on or before February 1. A member who fails to pay a fee within two months after written notice of delinquency shall be summarily suspended by the board from membership to the state bar, upon motion of the state bar pursuant to Rule 62, but may be reinstated in accordance with these rules.

12. *Resignation.* [[No change to text]]

13. *Insurance Disclosure.*

A. Each active and affiliate member of the State Bar of Arizona shall certify to the State Bar on the annual dues statement or in such other form as may be prescribed by the State Bar on or before February 1 of each year: (1) whether the lawyer or limited license legal practitioner is engaged in the private practice of law; and (2) if engaged in the private practice of law, whether the lawyer or limited license legal practitioner is currently covered by professional liability insurance. Each active and affiliate member who reports being covered by professional liability insurance shall notify the State Bar of Arizona in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason. A lawyer or limited license legal practitioner who acquires insurance after filing the annual dues statement or such other prescribed disclosure document with the State Bar of Arizona may advise the Bar as to the change of this status in coverage.

B. The State Bar of Arizona shall make the information submitted by active and affiliate members pursuant to this rule available to the public on its website as soon as practicable after receiving the information.

C. Any active or affiliate member of the State Bar of Arizona who fails to comply with this rule in a timely fashion may, on motion of the State Bar pursuant to Rule 62, be summarily suspended from the practice of law until such time as the lawyer or limited license legal practitioner complies. Supplying false information in complying with the requirements of this rule shall subject the lawyer or limited license legal practitioner to appropriate disciplinary action.

**(d) Powers of Board.** [[Only change is to subpart 2. As reflected below]]

2. Promote and aid in the advancement of the science of jurisprudence, the education of legal professionals and the improvement of the administration of justice.

**(e) – (g)** [[No change]]

**(h) Administration of rules.** Examination and admission of lawyer members shall be administered by the committee on examinations and the committee on character and fitness, as provided in these rules. Examination and licensure of limited license legal practitioners shall be administered by the Administrative Office of Courts as provided in ACJA 7-210. Licensure of alternative business structures shall be by the Committee on Alternative Business Structures, as provided in these rules and ACJA 7-209. Discipline, disability, and reinstatement matters shall be administered by the presiding disciplinary judge, as provided in these rules. All matters not otherwise specifically provided for shall be administered by the board.

**(i) – (j) [[No change]]**

**(k) Payment of Fees and Costs.** The payment of all fees, costs and expenses required under the provision of these rules related to membership, mandatory continuing legal education, discipline, reinstatement and unauthorized practice of law shall be made to the State Bar. The payment of all fees, costs and expenses required under the application for admission to the practice of law, examinations and admission shall be made to the finance office of the administrative office of courts.

**(l) Expenses of Administration and Enforcement.** The state bar shall pay all expenses incident to the administration and enforcement of these rules relating to membership, mandatory continuing legal education, discipline, disability, and reinstatement of lawyers, including the membership, mandatory continuing legal education and disability of limited license legal practitioners, except that costs and expenses shall be taxed against a respondent or applicant for readmission, as provided in these rules. The administrative office of the courts shall pay all expenses incident to administration and enforcement of these rules relating to application for admission to the practice of law, examinations and admission, including expenses related to application for licensure and examination of limited license legal practitioners. The State Bar and Administrative Office of Courts may recoup extraordinary costs beyond the schedule of fees adopted by the Court relating to an alternative business structure application for licensure or administration and enforcement of these rules against an alternative business structure.

**(m) [[No change]]**

## **Proposed New Rule 33.1. Committee; Entity Regulation**

### **(a) Committee.**

1. *Creation of the Committee.* The examination of applications and recommendations to grant or deny licensure of alternative business structures shall conform to this rule and ACJA 7-209. For such purposes, there shall be a Committee on Alternative Business Structures. The Committee on Alternative Business Structures shall consist of eleven members.

2. *Appointment of Members.* Members of the Committee shall be appointed by the Court, considering geographical, gender, and ethnic diversity. Members shall serve at the pleasure of the Court and may be removed from the Committee at any time by order of the Court. A member of the Committee may resign at any time. The Chief Justice shall appoint the Committee chair.

3. *Terms of Office.* Members of the Committee will serve three-year terms, which will be staggered among members as designated by the Chief Justice. Members may be reappointed to successive terms. If a vacancy exists due to resignation or inability of a board member to serve, the Court shall appoint another person to serve the unexpired term.

4. *Powers and Duties of the Committee.* The Committee on Alternative Business Structures shall examine applications for licensure and recommend to the Court those applicants who are deemed by the Committee to be qualified and not qualified pursuant to ACJA § 7-209. The Court will then consider the recommendations and either grant or deny licensure.

5. *Review by Court.* The Committee's recommendation regarding an application for licensure will be transmitted to the Court for review as provided in 7-209(E). Upon receipt of the recommendation, the Court may decline review or issue an order approving, denying, or approving with modification the recommendation. Upon receipt of the Court's order, the Committee shall either grant or deny the application as directed.

#### *6. Response to Recommendation to Deny.*

A. An applicant affected by any recommendation of the Committee on Alternative Business Structures may, within twenty (20) days after such a recommendation has been filed with the Court file a response with the Court. The response should state the facts that form the basis for the response, and applicant's reasons for believing this Court should approve, deny, or modify the recommendation of the Committee.

B. A copy of the response must be promptly served upon the Committee. The

Committee will have thirty (30) days after service to transmit the applicant's file, including all findings and reports prepared by or for the Committee, and a reply to the response fully advising the Court as to the Committee's reason for its recommendation. Thereafter, the Court may hold any hearings or request additional information as necessary to decide whether to approve or deny the application or approve it with modification.

C. Any document filed under Rule 33.1(a)(6) is open to the public except that, upon request by an applicant, the Clerk will seal medical or psychological reports and records. An applicant may request the Court to seal a portion of any other materials submitted.

**(b) Decision Regarding Licensure.** The Committee shall recommend approval of applications if the requirements in this rule and in ACJA 7-209 are met by the applicant. The Committee's recommendation shall state the factors in favor of approval.

(1) Decisions of the Committee must take into consideration the following regulatory objectives:

- (A) protecting and promoting the public interest;
- (B) promoting access to legal services
- (C) advancing the administration of justice and the rule of law;
- (D) encouraging an independent, strong, diverse, and effective legal profession; and
- (E) promoting and maintaining adherence to professional principles.

(2) The Committee shall examine whether an applicant has adequate governance structures and policies in place to ensure:

- (A) lawyers providing legal services to consumers act with independence consistent with the lawyers' professional responsibilities;
- (B) the alternative business structure maintains proper standards of work;
- (C) the lawyer makes decisions in the best interest of clients;
- (D) confidentiality consistent with Arizona Rule of Supreme Court 42 is maintained; and
- (E) any other business policies or procedures that do not interfere with a lawyers' duties and responsibilities to clients.

**(c) Power of Court to Revoke or Suspend License.** Nothing contained in this rule shall be considered as a limitation upon the power and authority of this Court upon



petition of the Committee on Alternative Business Structures, probable cause committee, bar counsel, or on its own motion, to file a petition with the presiding disciplinary judge to revoke or suspend, after due notice and hearing, the license of an alternative business structure in this state for fraud or material misrepresentation in the procurement the ABS's license.

**(d) Practice in Courts.** No alternative business structure shall employ any person to provide legal services in the State of Arizona unless the person is licensed to practice law or otherwise authorized to provide legal services under Rule 31.1 or 31.3

**(e) Retention and Confidentiality of Records of Applicants.** The records of applicants for licensure pursuant to ACJA 7-209 shall be maintained and may be destroyed in accordance with approved retention and disposition schedules pursuant to administrative order of the Court, pursuant to Rule 29, Rules of Supreme Court. The records and the proceedings concerning an application for licensure shall remain confidential, except as otherwise provided in these rules. Bar counsel shall be allowed access to the records of applicants for licensure and the proceedings of the Committee concerning an application for licensure in connection with any proceeding before the Court. In addition, the Committee or designated staff may disclose their respective records pertaining to an applicant for licensure to:

1. any licensing authority in any other state the applicant seeks similar licensure;
2. bar counsel for discipline enforcement purposes; and
3. a law enforcement agency, upon subpoena or good cause shown.

**(f) Immunity from Civil Suit.**

1. The Court, the Committee, and the members, staff, employees, and agents thereof, are immune from all civil liability for conduct and communications occurring in the performance of their official duties relating to the licensing of applicants seeking to be licensed as an alternative business structure.

2. Records, statements of opinions and other information regarding an applicant for licensure communicated by any person, firm, or institution, without malice, to the Court or the Committee, and the members, staff, employees, and agents thereof, are privileged, and civil suits predicated thereon may not be instituted.

## **Rule 41. Duties and Obligations of Members<sup>2</sup>**

### **(a) Definition.**

“Unprofessional conduct” means substantial or repeated violations of the oath of Admission to the State Bar or the Lawyer’s Creed of Professionalism of the State Bar of Arizona. Unprofessional conduct includes substantial or repeated violations of the Limited License Legal Practitioner’s Creed of Professionalism.

**(b) Duties and Obligations.** The duties and obligations of members, including affiliate members, shall be:

(1) Those prescribed by the Arizona Rules of Professional Conduct adopted as Rule 42 of these Rules.

(2) To support the constitution and the laws of the United States and the State of Arizona.

(3) To maintain the respect due to courts of justice and judicial officers.

(4) To counsel or maintain no other action, proceeding or defense than those which appear to him legal and just, excepting the defense of a person charged with a public offense.

(5) To be honest in dealings with others and not make false or misleading statements of fact or law.

(6) To fulfill the duty of confidentiality to a client and not accept compensation for representing a client from anyone other than the client without the client’s knowledge and approval.

(7) To avoid engaging in unprofessional conduct and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the duties to a client or the tribunal.

(8) To support the fair administration of justice, professionalism among lawyers and limited license legal practitioners, and legal representation for those unable to afford counsel.

(9) To protect the interests of current and former clients by planning for the lawyer’s or limited license legal practitioner’s termination of or inability to continue a law practice, either temporarily or permanently.

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<sup>2</sup> Definition of “unprofessional conduct”, Oath of Admission, and Lawyers Creed of Professionalism are inserted, without substantive changes, into Rule 41 due to their deletion in restyled Rule 31. The amendments to Rule 41 are to change the subsection numbering, without change or amendment from text in current Rule 31 and to include limited license legal practitioners in the definition of unprofessional conduct and make the Creed of Professionalism applicable to the limited license legal practitioners.

06.22.20

**(c) Oath and Creed.** The Oath of Admission to the Bar and Lawyer's and Limited License Legal Practitioner's Creed of Professionalism of the State Bar of Arizona are as follows.

### **Oath of Admission to the Bar**

I, (state your name), do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the State of Arizona;

I will treat the courts of justice and judicial officers with respect;

I will not counsel or maintain an action, proceeding, or defense that lacks a reasonable basis in fact or law;

I will be honest in my dealings with others and not make false or misleading statements of fact or law;

I will fulfill my duty of confidentiality to my client; I will not accept compensation for representing my client from anyone other than my client without my client's knowledge and approval;

I will avoid engaging in unprofessional conduct; I will not advance any fact prejudicial to the honor or reputation of a party or witness, unless required by my duties to my client or the tribunal;

I will at all times faithfully and diligently adhere to the rules of professional responsibility and A Lawyer's Creed of Professionalism of the State Bar of Arizona.

### **The Lawyer's and Limited License Legal Practitioner's Creed of Professionalism of the State Bar of Arizona**

#### *Preamble*

As a [lawyer/limited license legal practitioner], I must strive to make our system of justice work fairly and efficiently. To carry out that responsibility, I will comply with the letter and spirit of the disciplinary standards applicable to all [lawyers/limited license legal practitioners] and I will conduct myself in accordance with the following Code of Professionalism when dealing with my client, opposing parties, their counsel, tribunals and the general public.

#### **A. With respect to my client:**

1. I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my ability to provide my client with objective and independent advice;

2. I will endeavor to achieve my client's lawful objectives in business transactions and in litigation as expeditiously and economically as possible;
3. In appropriate cases, I will counsel my client with respect to alternative methods of resolving disputes;
4. I will advise my client against pursuing litigation (or any other course of action) that is without merit and I will not engage in tactics that are intended to delay the resolution of a matter or to harass or drain the financial resources of the opposing party;
5. I will advise my client that civility and courtesy are not to be equated with weakness;
6. While I must abide by my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with effective and honorable representation.

**B. With respect to opposing parties and their counsel:**

1. I will be courteous and civil, both in oral and written communication;
2. I will not knowingly make statements of fact or law that are untrue;
3. In litigation proceedings, I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the substantive interests of my client will not be adversely affected;
4. I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;
5. I will not utilize litigation or any other course of conduct to harass the opposing party;
6. I will not engage in excessive and abusive discovery; and I will advise my client to comply with all reasonable discovery requests;
7. I will not threaten to seek sanctions against any party or lawyer or limited license legal practitioner unless I believe that they have a reasonable basis in fact and law;
8. I will not delay resolution of a matter, unless the delay is incidental to an action reasonably necessary to ensure the fair and efficient resolution of that matter;
9. In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and not be rude or disrespectful;

10. I will not serve motions and pleadings on the other party or the party's counsel at such a time or in such a manner as will unfairly limit the other party's opportunity to respond;

11. In business transactions I will not quarrel over matters of form or style but will concentrate on matters of substance and content;

12. I will identify clearly, for other counsel or parties, all changes that I have made in the documents submitted to me for review.

**C. With respect to the courts and other tribunals:**

1. I will be an honorable advocate on behalf of my client, recognizing, as an officer of the court, that unprofessional conduct is detrimental to the proper functioning of our system of justice;

2. Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

3. I will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit;

4. I will not file frivolous motions;

5. I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

6. I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

7. When scheduled hearings or depositions have to be canceled, I will notify opposing counsel and, if appropriate, the court (or other tribunal) as early as possible;

8. Before dates for hearings or trial are set – or, if that is not feasible, immediately after such dates have been set – I will attempt to verify the availability of key participants and witnesses that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

9. In civil matters, I will stipulate to facts as to which there is no genuine dispute;

10. I will endeavor to be punctual in attending court hearings, conferences, and dispositions;

11. I will at all times be candid with, and respectful to, the tribunal.

**D. With respect to the public and our system of justice:**

1. I will remember that, in addition to commitment to my client's cause, my responsibilities as a [lawyer/limited license legal practitioner] include a devotion to the public good;
2. I will keep current in the areas in which I practice and, when necessary, will associate with, or refer my client to, counsel knowledgeable in another field or practice;
3. As a member of a self-regulating profession, I will be mindful of my obligations under the Rules of Professional Conduct to report violations of those Rules;
4. I will be mindful of the need to protect the integrity of the legal profession and will be so guided when considering methods and contents of advertising;
5. I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement or administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance.

### **Rule 43. Trust Accounts**

**(a) Duty to Deposit Client Funds and Funds Belonging to Third Persons; Deposit of Funds Belonging to the Lawyer or Limited License Legal Practitioner.** Funds belonging in whole or in part to a client or third person in connection with a representation shall be kept separate and apart from the lawyer's or limited license legal practitioner's personal and business accounts. All such funds shall be deposited into one or more trust accounts that are labeled as such. The location of the trust account shall be controlled by the provisions of ER 1.15(a). No trust account required by this rule may have overdraft protection. No funds belonging to the lawyer, limited license legal practitioner, or firm shall be deposited into a trust account established pursuant to this rule except as follows:

1. through 2. [[No change]]

3. Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the lawyer does not use a credit card processing service that permits the lawyer or limited license legal practitioner to direct such funds to the lawyer's or limited license legal practitioner's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.

4. Funds belonging in part to a client or third person and in part presently or potentially to the lawyer, limited license legal practitioner, or firm must be deposited therein, but the portion belonging to the lawyer, or limited license legal practitioner or firm must be withdrawn when due and legally available from the financial institution, or within a reasonable time thereafter, unless the right of the lawyer or firm to receive it is disputed by the client or third person, in which event the lawyer or limited license legal practitioner shall comply with ER 1.15(e).

#### **(b) Trust Account Requirements.**

##### *1. Standards of Performance.*

A. Due professional care must be exercised in the performance of the lawyer's or limited license legal practitioner's duties under this rule.

B. Employees and others assisting the attorneys or limited license legal practitioner's in the performance of such duties must be competent and properly trained and supervised.



C. Internal controls within the lawyer's or limited license legal practitioner's office must be adequate under the circumstances to safeguard funds or other property held in trust.

## *2. Trust Account Records.*

A. Every active and affiliate member of the state bar shall maintain, on a current basis, complete records of the handling, maintenance and disposition of all funds, securities and other property belonging in whole or in part to a client or third person in connection with a representation. These records shall include the records required by ER 1.15 and cover the entire time from receipt to the time of final disposition by the lawyer or limited license legal practitioner of all such funds, securities and other property. The lawyer or limited license legal practitioner shall preserve these records for a period of five years after termination of the representation.

B. A lawyer or limited license legal practitioner shall maintain or cause to be maintained an account ledger or the equivalent for each client, person or entity for which funds have been received in trust, showing:

(i) through (iii) [[No change]]

C. A lawyer or limited license legal practitioner shall make or cause to be made a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and the trust account bank statement.

D. A lawyer or limited license legal practitioner shall retain, in accordance with this rule, all trust account bank statements, cancelled pre-numbered checks (unless recorded on microfilm or stored electronically by a bank or other financial institution that maintains such records for the length of time required by this rule), other evidence of disbursements, duplicate deposit slips or the equivalent (which shall be sufficiently detailed to identify each item), client ledgers, trust account general ledger or register, and reports to clients.

E. A record shall be maintained showing all property, other than cash, held for clients or third persons in connection with a representation, including the date received, where located and when returned or otherwise distributed.

*3. Deposits from Credit Card Transactions.* A lawyer, limited license legal practitioner or firm may permit funds from a credit card transaction to be deposited into a client trust account for payment of advance fees, costs or expenses, and merchant or credit card transaction fees, but only if:

A. the lawyer or limited license legal practitioner has sources of funds, other than client or third-party funds, available at the time of the credit card transaction to replace any funds that may be debited from the account due to a credit card chargeback and any associated fees or charges;

B. [[No change]]

C. the trust account contains sufficient funds of the lawyer, limited license legal practitioner or firm at the time of the transaction to pay all merchant and credit card transaction fees, except to the extent such fees are paid by the client as part of the transaction.

4. *Disbursement Against Uncollected Funds.* A lawyer or limited license legal practitioner generally may not use, endanger, or encumber money held in trust for a client or third person without the permission of the owner given after full disclosure of the circumstances. Except for disbursements based upon any of the four categories of limited-risk uncollected deposits enumerated in paragraph A below, a lawyer or limited license legal practitioner may not disburse funds held in trust unless the funds are collected funds. For purposes of this provision, “collected funds” means funds deposited, finally settled by the issuer’s bank, and credited without recourse to the lawyer’s trust account.

A. Certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients and third persons owning trust account funds that may be affected by such disbursements. Notwithstanding that a deposit made to the lawyer’s or limited license legal practitioner’s trust account has not been finally settled and credited to the account, the lawyer or limited license legal practitioner may disburse funds from the trust account in reliance on such deposit under any of the following circumstances, if the lawyer or limited license legal practitioner has other sources of funds, other than client or third party funds, available at the time of disbursement to replace any uncollected funds:

(i) through (iv) [[No change]]

In any of the above circumstances, a lawyer’s or limited license legal practitioner’s disbursement of funds from a trust account in reliance on deposits that are not yet collected funds is at the risk of the lawyer or limited license legal practitioner making the disbursement. If any of the deposits fail, for any reason, the lawyer or limited license legal practitioner, upon receipt of notice or actual knowledge of the failure, must immediately act to protect the property of the lawyer’s or limited

license legal practitioner's clients and third persons. If the lawyer or limited license legal practitioner accepting any such check personally pays the amount of any failed deposit within three business days of receipt of notice that the deposit has failed, the lawyer or limited license legal practitioner will not be considered to have committed professional misconduct based upon the disbursement of uncollected funds.

B. A lawyer's or limited license legal practitioner's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those four categories set forth above, when it results in funds of clients or third persons being used, endangered, or encumbered, will be grounds for a finding of professional misconduct.

5. *Methods of Disbursement.* All trust account disbursements shall be made by pre-numbered check or by electronic transfer, provided the lawyer or limited license legal practitioner maintains a record of such disbursements in accordance with the requirements of this rule. All instruments of disbursement shall be identified as a disbursement from a trust account.

**(c) Certificate of Compliance.** Every active and affiliate member of the state bar shall on or before February 1 of each year file with the board a certificate certifying compliance with the provisions of this rule and ER 1.15 of the Arizona Rules of Professional Conduct, or that he or she is exempt from the provisions of this rule and ER 1.15. The certificate of compliance shall state as follows:

Annual Certificate of Compliance

[[No change]]

**(d) Trust Account Examination; Random Examination.**

1. *Authority.* The state bar shall evaluate all information coming to its attention by charge or otherwise indicating a possible violation of the trust account rules, and such information shall be treated and processed as is any other charge against a lawyer or limited license legal practitioner. In addition to trust account examinations that shall be conducted based upon information coming to the bar's attention, the state bar may also conduct random trust account examinations of any member's trust account(s), in accordance with Guidelines developed by the Board of Governors and approved by the supreme court.

2. *Scope of Examination.* [[No change]]

3. *Rebuttable Presumption.* If a lawyer or limited license legal practitioner fails to maintain trust account records required by this rule or ER 1.15, or fails to provide

trust account records to the state bar upon request or as ordered by a panelist, a hearing officer, the commission or the court, there is a rebuttable presumption that the lawyer or limited license legal practitioner failed to properly safeguard client or third person's funds or property, as required by this rule and ER 1.15.

4. *Limited Exception for Out-of-State Members.* All funds, securities and other property of clients and third persons held by an Arizona-licensed lawyer or limited license legal practitioner whose office is situated in another state shall not be subject to investigation, examination or verification except to the extent such funds and property are related to matters affecting Arizona clients.

5. *Trust Account Examination and Verification Expenses.* [[No change]]

**(e) Confidentiality.** [[No change]]

**(f) Establishment of Trust Accounts; State Bar Oversight.**

1. A lawyer, limited license legal practitioner or firm receiving funds belonging in whole or in part to a client or third person in connection with a representation must hold the funds in one of the following types of accounts:

A. a pooled interest-bearing or dividend-earning trust account ("IOLTA account") on which the interest or dividends accrue for the benefit of the Arizona Foundation for Legal Services and Education ("Foundation");

B. a separate interest-bearing or dividend-earning trust account for the particular client or client's matter on which the interest or dividends, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, will be paid to the client; or

C. a pooled interest-bearing or dividend-earning trust account, with subaccounting provided by the lawyer, limited license legal practitioner or the firm, which will provide for computation of interest or dividends earned by each client's funds and the payment thereof, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, to the client.

2. In determining which type of account provided for in section (f)(1) to use, a lawyer, limited license legal practitioner or firm shall take into consideration the following factors:

A. – C. [[No change]]

D. the cost of establishing and administering a separate non-IOLTA account for

the client's benefit, including service charges, the costs of the lawyer's or limited license legal practitioner's services, and the costs of preparing any tax reports required for income accruing to the client's benefit;

E. – F. [[No change]]

Funds should be deposited in an IOLTA account as provided for in section (f)(1)(A) if the interest does not cover the cost of opening and maintaining a separate interest-bearing or dividend-earning account. The State Bar shall not pursue a disciplinary matter against any lawyer, limited license legal practitioner or firm solely based on the good-faith determination of the appropriate account in which to deposit or invest client funds.

3. A lawyer, limited license legal practitioner or firm must maintain any client trust account provided for in section (f)(1) only at a regulated financial institution, which is either (i) a financial institution authorized by federal or state law to take deposits and conduct financial transactions with Arizona lawyers or limited license legal practitioners and is insured by the Federal Deposit Insurance Corporation or any successor insurance corporation(s) established by federal or state laws or (ii) any open-ended investment company registered with the Securities and Exchange Commission that is authorized by federal or state law to take deposits and conduct financial transactions with Arizona lawyers. A regulated financial institution must agree to comply with the requirements of section (f)(4) below and agree to pay IOLTA interest to the Foundation. The lawyer, limited license legal practitioner or firm must ensure that:

A. through C. [[No change]]

D. The financial institution sends notification immediately to the State Bar chief bar counsel of any properly payable instrument that is presented for payment against a client trust account containing insufficient funds, uncollectible funds, or a negative available balance, regardless of whether the financial institution honors the instrument. All occurrences shall be reported to the State Bar regardless of the cause.

If a financial institution ceases to operate as a regulated financial institution and has no successor operating as a regulated financial institution, a lawyer, limited license legal practitioner or firm that maintains an account listed under section (f)(1) at that financial institution must, upon receiving notice of the financial institution's change in status, promptly notify any clients whose funds may be affected by the change in status, promptly transfer, to the extent possible, any client trust account funds from that financial institution into another account provided for in section (f)(1), and promptly deposit into the other account provided for in

section (f)(1) any insurance, collateral, or proceeds resulting from the financial institution's change in status.

4. In addition to the requirements of section (f)(3), a lawyer, limited license legal practitioner or firm may only maintain an IOLTA account as provided for in section (f)(1)(A) at an authorized regulated financial institution. To be designated as authorized, a regulated financial institution must sign a participation certification before the fiscal year beginning July 1, with the State Bar as representative of its members, and the Foundation as a third-party beneficiary and administrator of the interest or dividends.

A. The participation certification must:

i. through ii. [[No change]]

iii. provide that the financial institution transmit, with each remittance to the Foundation, a statement, as directed by the Foundation, showing information including the name of the lawyer, limited license legal practitioner or firm on whose account the remittance is sent, the period for the remittance submitted, the account number, the account status, the rate of interest applied or the dividends earned, and the charges imposed against the interest remitted;

iv. provide that the financial institution transmit a report on each separate account, similar to the report required by section (f)(4)(a)(iii), to the lawyer, limited license legal practitioner or firm opening said trust account;

v. through vi. [[No change]]

vii. provide that the financial institution be allowed to charge a particular lawyer, limited license legal practitioner or firm for the reasonable cost of producing the reports and records required by this rule;

viii. through xi. [[No change]].

B. through C. [[No change]]

5. through 6. [[No change]]

7. In addition to other obligations under section (f) of this rule, all lawyers admitted to practice or limited license legal practitioners in this state shall:

A. as a condition thereof, consent to the reporting and production requirements set forth in this rule, and

B. provide information requested by the State Bar on the annual dues statement

regarding any and all client trust accounts they maintain.

**(g) [Reserved].**

**(h) Suspension of Member.** Any active or affiliate member members, who fails to comply with requirements of this rule shall be suspended summarily by order of the board upon notice by the state bar pursuant to Rule 62(a)(4), provided that a notice by certified, return receipt mail of such non-compliance shall have been sent to the member, mailed to the member's last address of record in the state bar office at least thirty days prior to such suspension.

**(i) Reinstatement of Member.** A lawyer or limited license legal practitioner who has been suspended for failure to comply with this rule may be reinstated by compliance with those provisions and notice to the board by the state bar of such compliance.

**(j) Applicability of Rule.** Every lawyer admitted to practice law in Arizona or limited license legal practitioner shall comply with the provisions of this rule regarding funds received, disbursed or held in Arizona, and funds received, disbursed or held on behalf of an Arizona client or a third person in connection with the representation of an Arizona client.

## **Rule 46. Jurisdiction in Discipline and Disability Matters; Definitions**

**(a) Lawyers Admitted to Practice.** [[No change]]

**(b) Licensed Alternative Business Structures.** An alternative business structure and its members are subject to the disciplinary jurisdiction of this court. Any false statement or misrepresentation made by an applicant for licensure which is not discovered until after the applicant is licensed may serve as an independent ground for the imposition of discipline under these rules and ACJA § 7-209 and an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant for licensure may result in revocation of the alternative business structure's license.

**(c) Limited License Legal Practitioner.** Any person licensed as a limited license legal practitioner is subject to the disciplinary jurisdiction of this court and the authority delegated in these rules to the board of governors of the state bar. Any false statement or misrepresentation made by an applicant for licensure which is not discovered until after the applicant is licensed may serve as an independent ground for the imposition of discipline under these rules and ACJA § 7-210 and an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant may result in revocation of the limited license legal practitioner's license.

**(d) Non-members.** [[No change to text]]

**(e) Former Judges.** [[No change to text]]

**(f) Incumbent Judges.** [[No change to text]]

**(g) Disbarred Lawyers.** [[No change to text]]

**(h) Definitions.** When the context so requires, the following definitions shall apply to the interpretation of these rules relating to discipline, disability and reinstatement of lawyers, limited license legal practitioners, and alternative business structures:

1. "Acting presiding disciplinary judge" -- 4. "Charge" [[No change]]

5. "Committee" means the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona unless stated otherwise.

6. "Complainant" means a person who initiates a charge against a lawyer, alternative business structure, or limited license legal practitioner or later joins in a charge to the state bar regarding the conduct of a lawyer, alternative business structure, or limited license legal practitioner. The complainant will be provided information as set forth in Rule 53, unless specifically waived by the complainant. The state bar or any bar counsel may be complainant.



7. “Complaint” -- 9. “Court” [[No change]]

10. “Discipline” means those sanctions and limitations on members and the practice of law provided in these rules, including those sanctions and limitations provided in these rules and ACJA 7-209 for alternative business structures and ACJA 7-210 for limited license legal practitioners. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so requires.

11. “Disciplinary clerk” -- 16. “Member” [[No change]]

17. “Misconduct” means any conduct sanctionable under these rules, including unprofessional conduct as defined in Rule 41(a) or conduct that is eligible for diversion, any conduct by an alternative business structure actionable under these rules or ACJA 7-209, or any conduct by a limited license legal practitioner actionable under these rules or ACJA 7-210.

18. “Non-member” -- 20. “Record,” [[No change]]

21. “Respondent” means a member, limited license legal practitioner, or an alternative business structure or its nonlawyer members, against whom a discipline or disability proceeding has been commenced.

22. “Settlement officer” -- 24. “State bar file” [[No change]]

## **Rule 47. General Procedural Matters**

### **(a) - (b) [[No change]]**

**(c) Service.** Service of the complaint, pleadings and subpoenas shall be effectuated as provided in the Rules of Civil Procedure, except as otherwise provided herein. Personal service of complaints and subpoenas may be made by staff examiners employed by the state bar.

#### *1. Service of Complaint.*

(A) *Individual Respondents.* Service of the complaint in any discipline or disability proceeding may be made on respondent or respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by counsel or respondent to the state bar's membership records department pursuant to Rule 32(c)(4)(iii). When service of the complaint is made by mail, bar counsel shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

(B) *ABS Respondents.* Service of the complaint in any discipline proceeding against an ABS or its members may be made on the designated agent for service per ACJA 7-209 or the respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent, respondent's counsel, or the designated agent for service pursuant to ACJA 7-209. When service of the complaint is made by mail, bar counsel shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

#### *2. Service of Subpoena.* [[No change]]

### **(d) - (l) [[No change]]**

## **Rule 48. Rules of Construction**

**(a) – (c) [[No change]]**

**(d) Standard of Proof.**

1. *Lawyers and Limited License Legal Practitioners.* Allegations in a complaint, applications for reinstatement, petitions for transfer to and from disability inactive status and competency determinations shall be established by clear and convincing evidence. In discipline proceedings that include allegations of trust account violations, there shall be a rebuttable presumption that any lawyer or limited license legal practitioner who fails to maintain trust account records as required by ER 1.15 or Rule 43, Ariz. R. S. Ct, or who fails to provide trust account records to the state bar upon request or as ordered by the committee, the presiding disciplinary judge, or the court, has failed to properly safeguard client or third-party funds or property, as required by the provisions of ER 1.15 or Rule 43, Ariz. R. S. Ct.

2. *Alternative Business Structures.* Allegations in a complaint or applications for reinstatement, shall be established by a clear and convincing evidence. In discipline proceedings that include allegations of trust account violations, there shall be a rebuttable presumption that any ABS that fails to maintain trust account records as required by ER 1.15 or Rule 43, Ariz. R. S. Ct, or that fails to provide trust account records to the state bar upon request or as ordered by the committee, the presiding disciplinary judge, or the court, has failed to properly safeguard client or third-party funds or property, as required by the provisions of ER 1.15 or Rule 43, Ariz. R. S. Ct.

**(e) Burden of Proof.** The burden of proof in proceedings seeking discipline is on the state bar. That burden is on the petitioning party in proceedings seeking transfer to disability inactive status. That burden in proceedings seeking reinstatement and transfer from disability inactive status is on respondent or applicant. The burden on an alternative business structure seeking licensure after a period of revocation or suspension is on respondent alternative business structure.

**(f) – (i) [[No change]]**

## **Rule 49. Bar Counsel**

**(a) - (b) [[No change]]**

**(c) Powers and Duties of Chief Bar Counsel.** Acting under the authority granted by this Court and under the direction of the executive director, chief bar counsel shall have the following powers and duties:

1. *Prosecutorial Oversight.* Chief bar counsel shall maintain and supervise a central office for the filing of requests for investigation relating to conduct by a member, including an affiliate member, or non-member, including an alternative business structure, and for the coordination of such investigations; supervise staff needed for the performance of all discipline functions within the responsibility of the state bar, overseeing and directing the investigation and prosecution of discipline cases and the administration of disability, reinstatement matters, and contempt proceedings, and compiling statistics regarding the processing of cases by the state bar.

2. *Dissemination of Discipline and Disability Information.*

A. Notice to Disciplinary Agencies. [[No change]]

B. Disclosure to National Discipline Data Bank. [[No change]]

C. Public Notice of Discipline Imposed. Chief bar counsel shall cause notices of orders or judgments of reprimand, suspension, disbarment, transfers to and from disability status and reinstatement as well as all sanctions against alternative business structures to be published in the Arizona Attorney or another usual periodic publication of the state bar, and shall send such notices to a newspaper of general circulation in each county where the lawyer maintained an office for the practice of law. Notices of sanctions or orders shall be posted on the state bar's website as follows:

(i) – (v) [[No change]]

(vi) Revocation, suspension, reprimand, and licensing after a period of revocation involving an alternative business structure shall be posted for an indefinite period of time.

D. Notice to Courts. [[No change]]

3. *Report.* [[No change]]

**(d) [[No change]]**

## **Rule 50. Attorney Discipline Probable Cause Committee**

**(a) – (d) [[No change]]**

**(e) Powers and Duties of the Committee.** Unless otherwise provided in these rules, the committee shall be authorized and empowered to act in accordance with Rule 55 and as otherwise provided in these rules, including ACJA 7-209 and 7-210, and to:

1. meet and take action, as deemed appropriate by the chair, in no less than three-person panels, each of which shall include a public member and a lawyer member (all members of the panel must participate in the vote and a majority of the votes shall decide the matter, a member of the panel may participate by remote access, and the quorum requirements of paragraph (f) do not apply to panels under this paragraph);

2. periodically report to the court on the operation of the committee;

3. recommend to the court proposed changes or additions to the rules of procedure for discipline and disability proceedings; and

4. adopt such procedures as may from time to time become necessary to govern the internal operation of the committee, as approved by the court.

**(f) – (h) [[No change]]**

## **Rule 51. Presiding Disciplinary Judge**

**(a) – (b) [[No change]]**

**(c) Powers and Duties of the Presiding Disciplinary Judge.** The presiding disciplinary judge shall be authorized to act in accordance with these rules and to:

1. – 2. [[No change]]

3. impose discipline on an attorney, alternative business structure, or limited license legal practitioner; transfer an attorney or limited license legal practitioner to disability inactive status; and serve as a member of a hearing panel in discipline and disability proceedings, as provided in these rules;

4. – 6. [[No change]]

7. recommend to the court proposed changes or additions to the rules of procedure for attorney and limited license legal practitioner discipline and disability proceedings, and to rules and ACJA 7-209 and 7-210 governing discipline of alternative business structures and limited license legal practitioners; and

8. adopt such practices as may from time to time become necessary to govern the internal operation of the office of the presiding disciplinary judge, as approved by the supreme court.

**(d) [[No change]]**

## **Rule 54. Grounds for Discipline**

Grounds for discipline of members, including affiliate members, non-members, and alternative business structures include the following:

**(a) – (h) [[No change]]**

**(i) Unprofessional conduct as defined in Rule ~~31(a)(2)(E)~~ 41(a).**

**(j) Violations of ACJA 7-209.**

**(k) Violations of ACJA 7-210.**

## **Rule 55. Initiation of Proceedings; Investigation**

**(a) Commencement; Determination to Proceed.** Bar counsel shall evaluate all information coming to its attention, in any form, by charge or otherwise, alleging unprofessional conduct, misconduct or incapacity. This shall include any allegation involving a violation of these rules or ACJA 7-209 or ACJA 7-210 by alternative business structures and limited license legal practitioners.

1. If bar counsel determines the lawyer, alternative business structure, or a limited license legal practitioner is not subject to the disciplinary jurisdiction of the supreme court, bar counsel shall refer the information to the appropriate entity.

2. If bar counsel determines the lawyer, alternative business structure, or limited license legal practitioner is subject to the disciplinary jurisdiction of the court, bar counsel shall, in the exercise of bar counsel's discretion, resolve the matter in one of the following ways:

A. – C. [[No change]]

**(b) Screening Investigation and Recommendation by Bar Counsel.** When a determination is made to proceed with a screening investigation, the investigation shall be conducted or supervised by bar counsel. Bar counsel shall give the respondent written notice that respondent is under investigation and of the nature of the allegations. No disposition adverse to the respondent shall be recommended by bar counsel until the respondent has been afforded an opportunity to respond in writing to the charge.

1. *Response to Allegations.* [[No change]]

2. *Action Taken by Bar Counsel.* [[No change]]

**(c) [[No change]]**



## **Rule 56. Diversion**

### **(a) [[No change]]**

**(b) Referral to Diversion.** Bar counsel, the committee, the presiding disciplinary judge, a hearing panel, or the court may offer diversion to an attorney, alternative business structure, or limited license legal practitioner based upon the Diversion Guidelines recommended by the board and approved by the court. The Diversion Guidelines shall be posted on the state bar and supreme court websites. Where the conduct so warrants, diversion may be offered if:

1. the lawyer, alternative business structure, or limited license legal practitioner committed professional misconduct, the lawyer or limited license legal practitioner is incapacitated, or the lawyer, alternative business structure, or limited license legal practitioner does not wish to contest the evidence of misconduct and bar counsel and the respondent agree that diversion will be appropriate;
2. the conduct could not be the basis of a motion for transfer to disability inactive status pursuant to Rule 63 of these rules;
3. the cause or basis of the professional misconduct by an individual lawyer, alternative business structure, or limited license legal practitioner or incapacity of an individual lawyer or limited license legal practitioner is subject to remediation or resolution through alternative programs or mechanisms, including:

A. – E. [[No change]]

4. the public interest and the welfare of the respondent's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately to a disciplinary or disability proceeding, the lawyer, alternative business structure, or limited license legal practitioner agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it; and
5. the terms and conditions of the diversion plan can be adequately supervised.

**(c) Diversion agreement or order.** If diversion is offered and accepted prior to an investigation pursuant to Rule 55(b), the agreement shall be between the attorney, alternative business structure or limited license legal practitioner and bar counsel. If bar counsel recommends diversion after an investigation pursuant to Rule 55(b) but before authorization to file a complaint, the recommendation for an order of diversion shall be submitted to the committee for consideration. If the committee rejects the recommendation, the matter shall proceed as otherwise provided in

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these rules. If diversion is offered and accepted after authorization to file a complaint, the matter shall proceed pursuant to Rule 57. If the presiding disciplinary judge rejects the diversion agreement, the matter shall proceed as provided in these rules.

## **Rule 57. Special Discipline Proceedings**

### **(a) Discipline by Consent.**

1. *Consent to Discipline.* [[No change]]

2. *Form of Agreement.* An agreement for discipline by consent shall be signed by respondent, respondent's counsel, if any, and bar counsel. An agreement shall include the following:

A. *Violations.* Each count alleged in the charge or complaint shall be addressed in the agreement, including a statement as to the specific disciplinary rule or ACJA section that was violated, or conditionally admitted to having been violated, and the facts necessary to support the alleged violation, conditional admission, or decision to dismiss a count.

B. *Forms of Discipline.* -- F. *Use of Standardized Documents.* [[No change]]

3. *Procedure.* [[No change]]

4. *Presiding Disciplinary Judge Decision.* [[No change]]

5. *Disbarment by Consent.* [[No Change]]

**(b) [[No Change]]**

## **Rule 58. Formal Proceedings**

**(a) Complaint.** Formal discipline proceedings shall be instituted by bar counsel filing a complaint or agreement for discipline by consent with the disciplinary clerk. The complaint shall be sufficiently clear and specific to inform a respondent of the alleged misconduct. The existence of prior sanctions or a prior course of conduct may be stated in the complaint if the existence of the prior sanction or course of conduct is necessary to prove the conduct alleged in the complaint.

1. *Form.* The complaint against any respondent and all subsequent pleadings filed before the presiding disciplinary judge should be captioned to identify the type of respondent: member of the State Bar of Arizona, licensed alternative business structure, or limited license legal practitioner.

2. *Service of Complaint.* [[No change]]

**(b) – (j) [[No change]]**

**(k) Decision.** Within thirty (30) days after completion of the formal hearing proceedings or receipt of the transcript, whichever is later, the hearing panel shall prepare and file with the disciplinary clerk a written decision containing findings of fact, conclusions of law and an order regarding discipline, together with a record of the proceedings. Sanctions imposed against lawyers and limited license legal practitioners shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* and, if appropriate, a proportionality analysis. Sanctions imposed against an ABS shall be determined in accordance ACJA 7-209 and to the extent applicable, with the American Bar Association *Standards for Imposing Lawyer Sanctions*. The decision shall be signed by each member of the hearing panel. Two members are required to make a decision. A member of the hearing panel who dissents shall also sign the decision and indicate the basis of the dissent in the decision. The disciplinary clerk shall serve a copy of the decision on respondent and on bar counsel of record. The hearing panel shall notify the parties when the decision will be filed outside the time limits of this rule and shall state the reason for the delay. The decision of the hearing panel is final, subject to the parties' appeal rights as set forth in Rule 59.

## **Rule 60. Sanctions**

**(a) Types and Forms of Sanctions, Attorneys.** Misconduct by an attorney, individually or in concert with others, shall be grounds for imposition of one or more of the following sanctions:

1. *Disbarment.* [[No change]]
2. *Suspension.* [[No change]]
3. *Reprimand.* [[No change]]
4. *Admonition.* [[No change]]
5. *Probation.* [[No change]]
6. *Restitution.* [[No change]]

**(b) Types and Forms of Sanctions, Alternative Business Structures.** Misconduct by an alternative business structure shall be grounds for imposition of one or more of the sanctions provided for in these rules and ACJA 7-209.

**(c) Types and Forms of Sanctions, Limited License Legal Practitioner.** Misconduct by a limited license legal practitioner shall be grounds for imposition of one or more of the sanctions provided for in these rules and ACJA 7-210.

**(d) Assessment of the Costs and Expenses.** [[No change to text]]

**(e) Enforcement.** [[No change to text]]

### **Rule 63. Transfer to Disability Inactive Status**

**(a) Purpose.** A lawyer or limited license legal practitioner whose physical or mental condition adversely affects the lawyer's or limited license legal practitioner's ability to practice law shall be investigated, and where warranted, shall be the subject of formal proceedings to determine whether the lawyer or limited license legal practitioner shall be transferred to disability inactive status. Transfer to disability inactive status is not a form of discipline but is designed to ensure the protection of the public and rehabilitation of the lawyer. Orders of transfer may include conditions of conduct in the nature of probation, and consent orders shall be encouraged.

#### **(b) Method of Transfer**

1. *Judicial determinations of incapacity.* If a lawyer or limited license legal practitioner has been judicially declared incompetent, incompetent to stand trial, or is voluntarily or involuntarily committed on the grounds of incompetency or other disability or incapacity in a court proceeding, the presiding disciplinary judge, upon motion of bar counsel and proper proof of the fact, shall enter an order of transfer immediately transferring the lawyer or limited license legal practitioner to disability inactive status for an indefinite period until further order. A copy of the order shall be personally served upon the clerk of the court, the lawyer or limited license legal practitioner, the lawyer's or limited license legal practitioner's guardian and conservator, and the director of the institution to which the lawyer or limited license legal practitioner may have been committed.

2. *Interim order of incapacity.* When it appears to the state bar, the committee, the presiding disciplinary judge, or the hearing panel that a lawyer or limited license legal practitioner may be incapacitated to the extent that the lawyer or limited license legal practitioner may be causing harm to the public, the legal profession or the administration of justice by reason of a mental or physical condition or because of addiction to drugs or intoxicants, bar counsel may file a motion, setting forth facts to support a prima facie finding of incapacity and accompanied by verification or affidavit, with the disciplinary clerk, for an order temporarily transferring the lawyer or limited license legal practitioner to disability inactive status pending a hearing to determine incapacity as provided in this rule.

3. *Finding of incapacity to discharge duty.* If it is alleged by a lawyer or limited license legal practitioner or otherwise appears in the course of a discipline proceeding that the lawyer or limited license legal practitioner is incapacitated or impaired by reason of a mental or physical condition or because of addiction to drugs or intoxicants, and the lawyer or limited license legal practitioner lacks the

capacity to adequately discharge the lawyer's or limited license legal practitioner's duty to clients, the bar, the courts or the public, a petition may be filed with the disciplinary clerk by bar counsel, on bar counsel's own initiative or upon a recommendation of the committee, the presiding disciplinary judge, or the lawyer or limited license legal practitioner alleged to be incapacitated.

4. *Finding of Incompetency to Assist in Defense.* If it is alleged by a lawyer or limited license legal practitioner or otherwise appears in the course of a discipline or disability proceeding that the lawyer is unable to understand the proceedings or assist in the lawyer's or limited license legal practitioner's defense as a result of a mental or physical condition, the presiding disciplinary judge, sua sponte, or upon motion of bar counsel, shall immediately transfer the lawyer or limited license legal practitioner to disability inactive status on a temporary basis pending a determination of competency, and all pending discipline proceedings shall be temporarily stayed. When a lawyer files a petition requesting transfer to disability inactive status alleging incompetence to assist in the lawyer's or limited license legal practitioner's defense, the petition shall be processed according to paragraph (c) of this rule.

5. *By consent agreement.* An agreement for transfer to disability inactive status must be signed by the lawyer or limited license legal practitioner, the lawyer's or limited license legal practitioner's counsel, if any, and bar counsel.

A. General language. Agreements must include the following language as applicable:

(i) a statement describing the nature and extent of the lawyer's or limited license legal practitioner's physical or mental condition that adversely affects his or her ability to practice law warranting transfer to disability inactive status;

(ii) a statement that the order of transfer to disability inactive status may include conditions of conduct in the nature of probation;

(iii) a statement that the lawyer's or limited license legal practitioner's consent to be transferred to disability inactive status is submitted freely and voluntarily and not as a result of coercion or intimidation;

(iv) a statement that the lawyer or limited license legal practitioner is represented by counsel, has chosen not to seek the assistance of counsel or is unable to secure representation by counsel;

(v) a statement that the lawyer or limited license legal practitioner voluntarily waives the right to an adjudicatory hearing on the transfer, unless otherwise ordered, and waives all motions, defenses, objections, or requests which have been made or raised, or could be asserted thereafter, if the transfer is approved;

(vi) a statement that the lawyer or limited license legal practitioner acknowledges the duty to comply with all rules pertaining to notification of clients, return of property, and other rules pertaining to suspension, including reinstatement;

(vii) a statement that outlines the possible consequences of any violation of the conditions of conduct that are being imposed in the nature of probation or any other provision of the agreement;

(viii) a statement that the agreement has been approved as to form and content by the chief bar counsel or chief bar counsel's designee; and

(ix) a statement that any complainant has been informed of the consent for transfer to disability inactive status and that a copy of the complainant's objection, if any, has been provided to the presiding disciplinary judge.

B. Evaluations. - C. Hearing. [[No change]]

**(c) Proceedings to Determine Incapacity or Competence.**

1. *Petition.* A petition requesting transfer to disability inactive status may be filed with the disciplinary clerk by bar counsel, on bar counsel's own initiative or upon a recommendation of the committee, the presiding disciplinary judge, or the lawyer or limited license legal practitioner alleged to be incapacitated. The petition shall be accompanied by affidavits, reports, or other documentation to support a prima facie finding of incapacity.

2. *Service.* [[No change]]

3. *Appointment of Counsel.* The presiding disciplinary judge may appoint counsel to represent the lawyer or limited license legal practitioner alleged to be incapacitated if the lawyer or limited license legal practitioners without adequate representation and the presiding disciplinary judge determines there is prima facie evidence of incapacity. The presiding disciplinary judge shall appoint counsel to represent a lawyer or limited license legal practitioner who is without representation in proceedings to determine competency.

4. *Hearing.*

A. *Incapacity to Discharge Duty.* The presiding disciplinary judge may take or direct whatever action deemed necessary or proper to determine whether the lawyer or limited license legal practitioner is incapacitated, including directing examination of the lawyer or limited license legal practitioner by qualified experts designated by the presiding disciplinary judge at the expense of the state bar. The petitioner shall have the burden of proving by clear and convincing evidence, which shall include a relevant and



recent medical, psychiatric or psychological evaluation, that, as a result of a mental or physical condition, the lawyer or limited license legal practitioner lacks the capacity to adequately discharge the lawyer's or limited license legal practitioner's duty to clients, the bar, the courts or the public.

B. Competency to Assist in Defense. The presiding disciplinary judge may take or direct whatever action deemed necessary or proper to determine whether the lawyer or limited license legal practitioner is competent, including directing examination of the lawyer by qualified experts. Upon the filing of a disability petition, the state bar may also direct a lawyer to submit to an independent medical or mental evaluation by a qualified expert chosen by the state bar. The mere presence of a mental illness, defect, or disability or physical incapacity is not grounds for finding a lawyer incompetent. The only issue to be determined is whether the lawyer or limited license legal practitioner is able to assist in the lawyer's or limited license legal practitioner's own defense. To assist in the lawyer's or limited license legal practitioner's own defense, the lawyer or limited license legal practitioner needs to understand the charges, be able to communicate with the lawyer's or limited license legal practitioner's attorney about the charges and any defense to those charges, and be able to testify about relevant conduct in the disciplinary proceeding. The expense for the evaluation shall be paid by the petitioner, unless otherwise ordered by the presiding disciplinary judge.

5. *Report of presiding disciplinary judge.* Within thirty (30) days after the hearing or the filing of the post-hearing memoranda or stipulation, the presiding disciplinary judge shall prepare and file with the disciplinary clerk a decision and order containing findings of fact and conclusions concerning transfer to disability inactive status based on a determination of incapacity to discharge duty or competency to assist in defense. The presiding disciplinary judge shall also serve a copy of the report and the order transferring the lawyer or limited license legal practitioner to disability inactive status on the parties. Thereafter, the lawyer or limited license legal practitioner shall be transferred to disability inactive status subject to a right to appeal. If a party does not appeal the order of transfer, the presiding disciplinary judge shall notify the court of same by memorandum, and the decision shall be final.

6. *Appeal.* [[No change]]

**(d) Status of Pending Disciplinary Proceedings.**

1. *Incapacity to Discharge Duty.* An order transferring a lawyer or limited license legal practitioner to disability inactive status based on a finding that a lawyer or limited license legal practitioner is unable to discharge his or her duties to clients, the bar, the courts or the public does not affect any pending disciplinary proceedings, which shall continue, or if previously stayed, shall resume. Upon a showing of good

cause, however, the presiding disciplinary judge or the court may order that all pending discipline proceedings be stayed. If pending discipline cases are stayed, any investigation may continue and testimony may be taken and other evidence preserved pending further proceedings. If information comes to the attention of bar counsel that good cause no longer supports the stay, the stay may be reviewed according to the procedure set forth for an order to show cause in paragraph (d)(3) of this rule.

2. *Competency to Assist in Defense.* If the presiding disciplinary judge or this court determines a lawyer or limited license legal practitioner is not competent to assist in the lawyer's or limited license legal practitioner's own defense, discipline proceedings shall be stayed, and the lawyer or limited license legal practitioner placed or retained on disability inactive status until an application for transfer to active status is filed and subsequently granted. If, after the filing of a petition for order to show cause pursuant to paragraph (d)(3) of this rule, a decision that the lawyer or limited license legal practitioner is competent to assist in the lawyer's or limited license legal practitioner's own defense becomes final, the temporary order of transfer to disability status shall be vacated by the presiding disciplinary judge or the court and the discipline proceedings shall resume.

### 3. *Order to Show Cause.*

A. *Petition.* In the case of a lawyer or limited license legal practitioner who has been transferred to disability inactive status, if information comes to the attention of the state bar indicating that good cause no longer exists to maintain a stay imposed pursuant to paragraph (d)(1) of this rule, or that the lawyer or limited license legal practitioner appears no longer to be incompetent and a stay imposed pursuant to paragraph (d)(2) of this rule is no longer appropriate, bar counsel shall file with the disciplinary clerk a petition for order to show cause.

B. *Hearing.* The presiding disciplinary judge shall issue an order requiring the lawyer or limited license legal practitioner to show cause why an existing stay of pending discipline proceedings imposed upon a showing of good cause or upon a finding of incompetency should not be lifted. The only issue to be addressed at the hearing is whether such a stay should be lifted.

C. *Decision and Order of presiding disciplinary judge.* The presiding disciplinary judge shall, as soon as practicable, prepare and file with the disciplinary clerk a decision containing findings of fact and an order concerning whether the stay should be lifted. The presiding disciplinary judge shall also serve a copy of the decision and order on the parties. Any such order

is subject to appellate review by the court. If an order is entered finding that an existing stay is no longer supported by good cause, or if an order is entered finding that a lawyer or limited license legal practitioner is no longer incompetent, and if the time to appeal has expired, any stayed discipline proceedings shall resume.

**D. Appeal and Review.** Appeal from the presiding disciplinary judge's order shall be as set forth in paragraphs (c)(6) of this rule. If the court accepts the presiding disciplinary judge's finding that an existing stay is no longer supported by good cause or that a lawyer or limited license legal practitioner is no longer incompetent, any stayed discipline proceedings shall resume.

**(e) Confidentiality of Disability Proceedings.** Proceedings and records relating to transfer to or from disability inactive status, including determinations of competency, are confidential, except that orders transferring a lawyer or limited license legal practitioner to or from disability inactive status are public.

**(f) Assessment of Costs.** [[No change]]

**(g) Reinstatement to Active Status.**

1. *Application.* [[No change]]

2. *Waiver of Doctor-Patient Privilege.* The filing of an application for transfer to active status by a lawyer or limited license legal practitioner transferred to disability inactive status shall constitute a waiver of any doctor-patient privilege with respect to any treatment of the lawyer or limited license legal practitioner during the period of disability. The lawyer or limited license legal practitioner shall be required to disclose the name of each psychiatrist, psychologist, physician or other health care provider, and hospital or other institution by whom or in which the lawyer or limited license legal practitioner has been examined or treated since the lawyer's or limited license legal practitioner's transfer to disability inactive status. The lawyer or limited license legal practitioner shall furnish to the presiding disciplinary judge or this court written authorization to each health care provider and facility to release information and records relating to the disability if requested by the presiding disciplinary judge, this court or appointed medical experts.

3. *Reinstatement.* No lawyer or limited license legal practitioner transferred to disability inactive status may resume active status until reinstated by order of this court. A lawyer or limited license legal practitioner shall be entitled to apply for transfer to active status at any time at least one year after the lawyer's last application or at such shorter intervals as the court or the presiding disciplinary judge may direct in the order transferring the lawyer to disability inactive status or any modification thereof. The application shall be granted upon a showing, by clear and convincing

evidence, that the lawyer's or limited license legal practitioner's mental or physical condition has been removed and the lawyer or limited license legal practitioner is fit to resume the practice of law. In its discretion, the hearing panel or the court may direct that the lawyer or limited license legal practitioner establish proof of competence and learning in law, which proof may include certification by the bar examiners of the lawyer's or limited license legal practitioner's successful completion of an examination for admission to practice, notwithstanding the lawyer or limited license legal practitioner was on inactive status less than five years. If a lawyer or limited license legal practitioner has been transferred to disability inactive status by an order in accordance with these rules and, thereafter, has been judicially declared to be no longer under disability, the hearing panel may dispense with further evidence that the disability has been removed and may recommend the lawyer's or limited license legal practitioner's reinstatement to active status upon such terms as are deemed appropriate.

4. *Pending Discipline.* [[No change]]

## **Rule 66. Appointment of Conservator to Protect Client Interests.**

**(a) Appointment of Conservator.** The state bar or any other interested person may petition the presiding judge of a superior court or the presiding judge's designee ("appointing judge") to appoint one or more eligible persons to act as conservators of the client files and records, client trust accounts and such other affairs of a lawyer or limited license legal practitioner or formerly admitted lawyer or formerly limited license legal practitioner, as the appointing judge determines appropriate. There shall be no filing fee for petitions for conservator under this rule. The appointing judge shall appoint a conservator if the lawyer or limited license legal practitioner maintains or has maintained a law practice within the county, no partner or other responsible successor to the practice of the lawyer or limited license legal practitioner is known to exist, and:

1. the lawyer or limited license legal practitioner is made the subject of an order of interim suspension and related matters; or
2. the appointing judge by order directs the state bar to file an application under this rule; or
3. the lawyer or limited license legal practitioner is transferred to inactive status because of incapacity or disability, or disappears or dies; or
4. where other reasons requiring protection of the public are shown.

**(b) Service of Petition.** A copy of the petition and any related order to show cause shall be personally served upon the respondent lawyer or limited license legal practitioner, the state bar, and upon other persons as provided in Rule 63 governing transfer to disability inactive status. Upon affidavit of petitioner or the state bar that diligent efforts have failed to reveal the whereabouts of respondent, or that respondent is evading service, service shall be made on the respondent by certified mail/delivery restricted to addressee in addition to regular first-class mail, sent to the last address provided by the respondent to the state bar pursuant to Rule 32(c)(3). When service of the petition is made by mail, the state bar shall file a notice of service in the conservatorship matter indicating the time and manner of mailing. Service shall be deemed complete when the notice is filed.

**(c) – (e) [[No change]]**

## **Rule 67. Duties of Conservator**

**(a) - (b) [[No change]]**

**(c) Written Notice to Clients of Conservatorship.** The conservator shall send written notice to all clients listed in the inventory of the fact of the appointment of a conservator, the grounds that required such appointment, and the possible need of the clients to obtain substitute counsel or limited license legal practitioner. Written notice shall be by first class mail to the client's last known address, as ascertained from a review of the client's file.

**(d) Return of Files.** A file in the conservator's possession or control shall be returned to a client upon the execution of a written receipt, or released to substitute counsel or limited license legal practitioner upon the request of the client and execution of a written receipt by such counsel or limited license legal practitioner.

**(e) [[No change]]**

**(f) Conservator-Client Relationship.** Neither the conservator nor any partner, associate or other lawyer or limited license legal practitioner practicing in association with the conservator shall:

1. make any recommendation of counsel or limited license legal practitioner to any client identified as a result of the conservatorship in connection with any matter identified during the conservatorship; or
2. represent such a client in connection with:
  - A. any matter identified during the conservatorship; or
  - B. any other matter during or for a period of three (3) years after the conclusion of the conservatorship.

**(g) – (h) [[No change]]**

## **VI. UNAUTHORIZED PRACTICE OF LAW**

### **Rule 75. Jurisdiction**

**(a) Jurisdiction.** This court has jurisdiction over any person engaged in the unauthorized practice of law pursuant to Rule 31(b) of these rules or any entity providing legal services contrary to the requirements of Rule 31.1(c). Proceedings against non-members or alternative business structures may also be instituted pursuant to Rules 47 through 60, and such proceedings may be concurrent with proceedings under this rule and Rules 76 through 80, Ariz.R.S.Ct.

**(b) Definitions.** The following definitions shall apply in unauthorized practice of law proceedings.

1. All definitions in Rules 31(b); 31.1(c); and 41(a) shall apply.
2. “Bar counsel” [[No change]]
3. “Charge” means any allegation of misconduct or incapacity of a lawyer limited license legal practitioner, or alternative business structure or misconduct or incident of unauthorized practice of law brought to the attention of the state bar.
4. “Committee” [[No change]]
5. “Complainant” means a person who initiates a charge or later joins in a charge to the state bar against a non-lawyer or alternative business structure regarding the unauthorized practice of law. The state bar or any bar counsel may be a complainant.
6. “Complaint” through 11. “Record” [[No change]]
12. “Respondent” is any person or alternative business structure subject to the jurisdiction of the court against whom a charge is received for violation of these rules.
13. “State bar” through 16. “Unauthorized practice of law proceeding” [[No change]]

## **Rule 76. Grounds for Sanctions, Sanctions and Implementation**

### **(a) Grounds for Sanctions.** Grounds for sanctions include the following:

1. Any act found to constitute the unauthorized practice of law pursuant to Rule 31.2.

2. Willful disobedience or violation of a court ruling or order requiring the individual or alternative business structure to do or forbear to do an act connected with the unauthorized practice of law.

3. [[No change]]

### **(b) Sanctions and Dispositions.**

1. *Agreement to Cease and Desist.* [[No change]]

2. *Cease and Desist Order.* [[No change]]

3. *Injunction.* [[No change]]

4. *Civil Contempt.* [[No change]]

5. *Restitution.* [[No change]]

6. *Civil Penalty.* The superior court may order a civil penalty up to \$25,000 against every respondent upon whom another sanction is imposed. Civil penalties against an alternative business structure shall be deposited in the Alternative Business Structure Fund. Civil fines against a limited license legal practitioner shall be deposited in the fund established by the supreme court for that program.

7. *Costs and Expenses.* [[No change]]

### **(c) Implementation of Cease and Desist Sanction.** [[No change]]



**Final Amended Appendix 2B: Restyled and Amended Rule 31; Proposed Amended Rules 32, 41, 43, 46-51, 54-58, 60, 63, 66-67, 75-76; and Proposed New Rule 33.1 (Markup)**

**Rule 31. Supreme Court Jurisdiction<sup>3</sup>**

**(a) Jurisdiction.** The Arizona Supreme Court has jurisdiction over any person or entity engaged in the authorized or unauthorized “practice of law” in Arizona, as that phrase is defined in (b). The Arizona Supreme Court also has jurisdiction over any ABS who is licensed pursuant to Rule 31.1(c) and ACJA 7-209.

**(b) Definition.** “Practice of law” means providing legal advice or services to or for another by:

- (1) preparing or expressing legal opinions to or for another person or entity;
- (2) representing a person or entity in a judicial, quasi-judicial, or administrative proceeding, or other formal dispute resolution process such as arbitration or mediation;
- (3) preparing a document, in any medium, on behalf of a specific person or entity for filing in any court, administrative agency, or tribunal;
- (4) negotiating legal rights or responsibilities on behalf of a specific person or entity; or
- (5) preparing a document, in any medium, intended to affect or secure a specific person’s or entity’s legal rights.

**Rule 31.1. Authorized Practice of Law.**

**(a) Requirement.** A person may engage in the practice of law in Arizona, or represent that he or she is authorized to engage in the practice of law in Arizona, only if:

- (1) the person is an active member in good standing of the State Bar of Arizona under Rule 32; or
- (2) the person is specifically authorized to do so under Rules 31.3, 38, or 39.

**(b) Lack of Good Standing.** A person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status,

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<sup>3</sup> Rules 31 through 31.3 as presented in this appendix represents the restyling of Rule 31 as discussed in the petition. Underlined content represents proposed amendments related only to the regulation of ABSs or LLLPs.

is not a member in good standing of the State Bar of Arizona under Rule 31.1(a)(1).

**(c) Alternative Business Structure (ABS).** An entity that includes nonlawyers who have an economic interest or decision-making authority as defined in ACJA 7-209 may employ, associate with, or engage a lawyer or lawyers to provide legal services to third parties only if:

(1) it employs at least one person who is an active member in good standing of the State Bar of Arizona under Rule 32 who supervises the practice of law under ER 5.3;

(2) it is licensed pursuant to ACJA § 7-209; and

(3) legal services are only provided by persons authorized to do so and in compliance with the Rules of Supreme Court.

**Rule 31.2. Unauthorized Practice of Law.** Except as provided in Rule 31.3, a person, entity, or ABS who is not authorized to practice law in Arizona under Rule 31.1(a), (c) or Rule 31.3 must not:

**(a)** engage in the practice of law or provide legal services in Arizona; or

**(b)** use the designations “lawyer,” “attorney at law,” “counselor at law,” “law,” “law office,” “J.D.,” “Esq.,” “alternative business structure (ABS)” or other equivalent words that are reasonably likely to induce others to believe that the person or entity is authorized to engage in the practice of law or provide legal services in Arizona.

### **Rule 31.3. Exceptions to Rule 31.2.**

#### **(a) Generally.**

(1) Notwithstanding Rule 31.2, a person or entity may engage in the practice of law in a limited manner as authorized in Rule 31.3(b) through (e), but the person or entity who engages in such an activity is subject to the Arizona Supreme Court’s jurisdiction concerning that activity.

(2) A person who is currently suspended or has been disbarred from the State Bar of Arizona, or is currently on disability inactive status, may not engage in any of the activities specified in this Rule 31.3 unless this rule authorizes a specific activity.

(3) An ABS whose license has been suspended or revoked may not engage in any of the activities specified in this rule, except an ABS whose license has been suspended may engage in activities as expressly authorized by judgment or order of this court, the presiding disciplinary judge, or a hearing panel.

**(b) Governmental Activities and Court Forms.**

(1) ***In Furtherance of Official Duties.*** An elected official or employee of a governmental entity may perform the duties of his or her office and carry out the government entity's regular course of business.

(2) ***Forms.*** The Supreme Court, Court of Appeals, superior court, and limited jurisdiction courts may create and distribute forms for use in Arizona courts.

**(c) Legal Entities.**

(1) ***Definition.*** "Legal entity" means an organization that has legal standing under Arizona law to sue or be sued in its own right, including a corporation, a limited liability company, a partnership, an association as defined in A.R.S. §§ 33-1202 or 33-1802, a trust or a governmental or tribal entity.

(2) ***Documents.*** A legal entity may prepare documents incidental to its regular course of business or other regular activity if they are for the entity's use and are not made available to third parties.

(3) ***Justice and Municipal Courts.*** A person may represent a legal entity in a proceeding before a justice court or municipal court if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(4) ***General Stream Adjudication Proceeding.*** A person may represent a legal entity in superior court in a general stream adjudication proceeding conducted under A.R.S. §§ 45-251 et seq. (including a proceeding before a master appointed under A.R.S. § 45-255) if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the proceeding;

(C) such representation is not the person's primary duty to the entity but is secondary or incidental to other duties related to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the corporation or association (other than receiving reimbursement for costs).

(5) ***Administrative Hearings and Agency Proceedings.*** A person may represent a legal entity in a proceeding before the Office of Administrative Hearings, or before an Arizona administrative agency, commission, or board, if:

(A) the person is an officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the particular proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).

(6) ***Arizona Corporation Commission.*** A person may represent a legal entity in a proceeding before the Arizona Corporation Commission ("Commission") if the representation complies with subsection (c)(5). Additionally, a person with expertise in the field of public utility regulatory compliance, public utility accounting or finance, public utility engineering, railroad engineering or safety, or pipeline engineering or safety may prepare, submit, or file with the Commission on the entity's behalf a tariff, rate schedule, engineering report, or other technical or financial document within the person's field of expertise.

(7) ***Exception.*** Despite Rule 31.3(c)(3) through (c)(5), a court, the hearing officer, or the officer presiding at the agency or commission proceeding, may order the entity to appear only through counsel if the court or officer determines that the person representing the entity is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

**(d) Tax-Related Activities and Proceedings.**

(1) A person may prepare a tax return for an entity or another person.

(2) A certified public accountant or other federally authorized tax practitioner (as that term is defined in A.R.S. § 42-2069(D)(1)) may:

(A) render individual and corporate financial and tax advice to clients and prepare tax-related documents for filing with governmental agencies;

(B) represent a taxpayer in a dispute before the State Board of Tax Appeals if the amount at issue is less than \$25,000; and

(C) practice before the Internal Revenue Service or other federal agencies if authorized to do so.

(3) A property tax agent (as that term is defined in A.R.S. § 32-3651), who is registered with the Arizona State Board of Appraisal under A.R.S. § 32-3642, may practice as authorized under A.R.S. § 42-16001.

(4) A person may represent a party in a small claim proceeding in Arizona Tax Court conducted under A.R.S. §§ 12-161 et seq.

(5) In any tax-related proceeding before the Arizona Department of Revenue, the Office of Administrative Hearings relating to the Arizona Department of Revenue, a state or county board of equalization, the Arizona Department of Transportation, the Arizona Department of Economic Security, the Arizona Department of Child Safety, ~~the Arizona Corporation Commission~~, or any county, city, or town taxing or appeals official, a person may represent a taxpayer if:

(A) the person is:

(i) a certified public accountant,

(ii) a federally authorized tax practitioner (as that term is defined in A.R.S. § 42-2069(D)(1)); or

(iii) in matters in which the amount in dispute, including tax, interest and penalties, is less than \$5,000, the taxpayer's duly appointed representative; or

(B) the taxpayer is a legal entity (including a governmental entity) and:

(i) the person is full-time officer partner, member, manager, or employee of the entity;

(ii) the entity has specifically authorized the person to represent it in the proceeding;

(iii) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(v) the person is not receiving separate or additional compensation for such representation (other than receiving reimbursement for costs).

**(e) Other.**

(1) ***Children with Disabilities.*** In any administrative proceeding under 20 U.S.C. §§ 1415(f) or (k) regarding any matter relating to the identification, evaluation, educational placement, or the provision of a free appropriate public education for a child with a disability or suspected disability, a person may represent a party if:

(A) the hearing officer determines that the person has special knowledge or training with respect to the problems of children with disabilities; and

(B) the person is not charging a fee for representing the party (other than receiving reimbursement for costs).

Despite these provisions, the hearing officer may order the party to appear only through counsel or in some other manner if he or she determines that the person representing the party is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

(2) ***Department of Fire, Building and Life Safety.*** In any landlord/tenant dispute before the Arizona Department of Fire, Building and Life Safety, a person may represent a party if:

(A) the party has specifically authorized the person to represent the party in the proceeding; and

(B) the person is not charging a fee for the representing the party (other than receiving reimbursement for costs).

(3) ***Fiduciaries.*** A person licensed as a fiduciary under A.R.S. § 14-5651 may perform services in compliance with Arizona Code of Judicial Administration § 7-202 without acting under the supervision of an attorney authorized under Rule 31.1(a) to engage in the practice of law in Arizona. Despite this provision, a court may suspend the fiduciary's authority to act without an attorney if it determines that lay representation is interfering with the proceeding's orderly progress or imposing undue burdens on other parties.

(4) ***Legal Document Preparers and Limited License Legal Practitioner.*** Certified legal document preparers and limited license legal practitioners may perform services in compliance with the Arizona Code of Judicial Administration. Disbarred or suspended attorneys may only be certified as a legal document preparer or licensed as a limited license legal practitioner if approved by the Supreme Court.

**(5) *Mediators.***

(A) A person who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona may prepare a written agreement settling a dispute or file such an agreement with the appropriate court if:

(i) the person is employed, appointed, or referred by a court or government entity and is serving as a mediator at the direction of the court or a governmental entity; or

(ii) the person is participating without compensation in a nonprofit mediation program, a community-based organization, or a professional association.

(B) Unless specifically authorized in Rule 31.3(e)(5)(A), a mediator who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona and who prepares or provides legal documents for the parties without attorney supervision must be certified as a legal document preparer in compliance with the Arizona Code of Judicial Administration § 7-208.

**(6) *Nonlawyer Assistants and Out-of-State Attorneys.***

(A) A nonlawyer assistant may act under an attorney's supervision in compliance with ER 5.3 of the Arizona Rules of Professional Conduct. This exception is not subject to the restriction in Rule 31.3(a)(2) concerning a person who is currently suspended or has been disbarred from the State Bar of Arizona or is currently on disability inactive status.

(B) An attorney licensed in another jurisdiction may engage in conduct that is permitted under ER 5.5 of the Arizona Rules of Professional Conduct.

**(7) *Personnel Boards.*** An employee may designate a person as a representative who is not necessarily an attorney to represent the employee before any board hearing or any quasi-judicial hearing dealing with personnel matters, but no fee may be charged (other than for reimbursement of costs) for any services rendered in connection with such hearing by any such designated representative who is not authorized under Rule 31.1(a) to engage in the practice of law in Arizona.

**(8) *State Bar Fee Arbitration.*** A person may represent a legal entity in a fee arbitration proceeding conducted by the State Bar of Arizona Fee Arbitration Committee, if:

(A) the person is a full-time officer, partner, member, manager, or employee of the entity;

(B) the entity has specifically authorized the person to represent it in the particular proceeding;

(C) such representation is not the person's primary duty to the entity, but is secondary or incidental to other duties relating to the entity's management or operation; and

(D) the person is not receiving separate or additional compensation for representing the entity (other than receiving reimbursement for costs).



## **Rule 32. Organization of State Bar of Arizona.**

**(a) State Bar of Arizona.** The Supreme Court of Arizona maintains under its direction and control a corporate organization known as the State Bar of Arizona.

1. *Practice of law.* [[No change]]

2. *Mission.* The State Bar of Arizona exists to serve and protect the public with respect to the provision of legal services and access to justice. Consistent with these goals, the State Bar of Arizona seeks to improve the administration of justice and the competency, ethics, and professionalism of lawyers and those engaged in the authorized practice of law ~~practicing~~ in Arizona. This Court empowers the State Bar of Arizona, under the Court's supervision, to:

A. organize and promote activities that fulfill the responsibilities of the legal profession and its ~~individual~~ members to the public;

B. promote access to justice for those who live, work, and do business in this state;

C. aid the courts in the administration of justice;

D. assist this Court with the regulation and discipline of persons engaged in the practice of law; assist the Court with the regulation and discipline of alternative business structures (ABS) and limited license legal practitioners (LLLP); foster on the part of those engaged in the practice of law ideals of integrity, learning, competence, public service, and high standards of conduct; serve the professional needs of its members; and encourage practices that uphold the honor and dignity of the legal profession;

E. conduct educational programs regarding substantive law, best practices, procedure, and ethics; provide forums for the discussion of subjects pertaining to the administration of justice, the practice of law, and the science of jurisprudence; and report its recommendations to this Court concerning these subjects.

**(b) Definitions.** Unless the context otherwise requires, the following definitions shall apply to the interpretation of these rules relating to admission, discipline, disability and reinstatement of lawyers, ABSs, and LLLPs:

1. “Board” [[No change]]

2. “Court”[[No change]]

3. “Discipline” means those sanctions and limitations on members and others and the practice of law provided in these rules. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so

requires. Discipline includes sanctions and limitations on ABSs as provided in these rules and ACJA 7-209 and LLPs as provided in these rules and ACJA 7-210.

4. “Discipline proceeding” and “disability proceeding” [[No change]]

5. “Member” [[No change]]

6. “Non-member” [[No change]]

7. “Respondent” means any person, ABS, or LLP subject to the jurisdiction of the court against whom a charge is received for violation of these rules or ACJA 7-209 or ACJA 7-210.

8. “State bar” [[No change]]

### **(c) Membership.**

1. *Classes of Members.* Members of the state bar shall be divided into ~~five~~ six classes: active, inactive, retired, suspended, ~~and judicial, and affiliate.~~ Disbarred or resigned persons are not members of the bar.

2. *Active Members.* Every person licensed to practice law in this state is an active member except for persons who are inactive, retired, suspended, ~~or judicial, or~~ affiliate members.

3. *Affiliate Members.* Limited license legal practitioners (LLPs) are affiliate members for purposes of regulation and discipline under these rules.

~~3. 4. Admission, Licensure and Fees. All persons admitted to practice in accordance with the rules of this court shall, by that fact, become active members of the state bar. Upon admission to the state bar or licensure as an LLP, the applicant a person:~~

- (i) shall pay a fee as required by the supreme court, which shall include the annual membership fee for ~~active members of the state bar.~~ If ~~an applicant a person~~ a person is admitted or licensed to the state bar on or after July 1 in any year, the annual membership fee ~~payable upon admission~~ shall be reduced by one half.
- (ii) Upon admission to the state bar, ~~an a lawyer~~ a lawyer applicant shall also, in open court, take and subscribe an oath to support the constitution of the United States and the constitution and laws of the State of Arizona in the form provided by the supreme court.
- (iii) All members shall provide to the state bar office a current street address, e-mail address, telephone number, any other post office address the member may use, and the name of the bar of any other jurisdiction to which the member may be admitted. Any change in this information shall

be reported to the state bar within thirty days of its effective date. The state bar office shall forward to the court, on a quarterly basis, a current list of membership of the bar.

~~4.~~ 5. *Inactive Members.* [[No change to text]]

~~5.~~ 6. *Retired Members.* [[No change to text]]

~~6.~~ 7. *Judicial Members.* [[No change to text]]

~~7~~ 8. *Membership Fees.* An annual membership fee for active members, inactive members, retired members, ~~and~~ judicial members, and affiliate members shall be established by the board with the consent of this court and shall be payable on or before February 1 of each year. No annual fee shall be established for, or assessed to, active members who have been admitted to practice in Arizona before January 1, 2009, and have attained the age of 70 before that date. The annual fee shall be waived for members on disability inactive status pursuant to Rule 63. Upon application, the Chief Executive Officer/Executive Director may waive all or part of the dues of any other member for reasons of personal hardship. Both the grant or denial of an application shall be reported to the board. Denial of a personal hardship waiver shall be reviewed by the board. The board should take all steps necessary to protect private information relating to the application.

~~8~~ 9. *Computation of Fee.* The annual membership fee shall be composed of an amount for the operation of the activities of the State Bar and an amount for funding the Client Protection Fund, each of which amounts shall be stated and accounted for separately. Each active and inactive member, who is not exempt, and each affiliate member shall pay the annual Fund assessment set by the Court, to the State Bar together with the annual membership fee, and the State Bar shall transfer the fund assessment to the trust established for the administration of the Client Protection Fund. The State Bar shall conduct any lobbying activities in compliance with *Keller v. State Bar of California*, 496 U.S. 1 (1990). Additionally, a member who objects to particular State Bar lobbying activities may request a refund of the portion of the annual fee allocable to those activities at the end of the membership year.

~~9~~ 10. *Allocation of fee.* Upon payment of the membership fee, each individual lawyer member shall receive a bar card and each LLLP shall receive a certificate of licensure, issued by the board evidencing payment. All fees shall be paid into the treasury of the state bar and, when so paid, shall become part of its funds, except that portion of the fees representing the amount for the funding of the Client Protection Fund shall be paid into the trust established for the administration of the Client Protection Fund.

~~40~~ 11. Delinquent Fees. A fee not paid by the time it becomes due shall be deemed delinquent. An annual delinquency fee for active members, inactive members, retired members, ~~and~~ judicial members, and affiliate members shall be established by the board with the consent of this court and shall be paid in addition to the annual membership fee if such fee is not paid on or before February 1. A member who fails to pay a fee within two months after written notice of delinquency shall be summarily suspended by the board from membership to the state bar, upon motion of the state bar pursuant to Rule 62, but may be reinstated in accordance with these rules.

~~44~~ 12. Resignation. [[No change to text]]

~~42~~ 13. Insurance Disclosure.

A. Each active and affiliate member of the State Bar of Arizona shall certify to the State Bar on the annual dues statement or in such other form as may be prescribed by the State Bar on or before February 1 of each year: (1) whether the lawyer or limited license legal practitioner is engaged in the private practice of law; and (2) if engaged in the private practice of law, whether the lawyer or limited license legal practitioner is currently covered by professional liability insurance. Each active and affiliate member who reports being covered by professional liability insurance shall notify the State Bar of Arizona in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason. A lawyer or limited license legal practitioner who acquires insurance after filing the annual dues statement or such other prescribed disclosure document with the State Bar of Arizona may advise the Bar as to the change of this status in coverage.

B. The State Bar of Arizona shall make the information submitted by active and affiliate members pursuant to this rule available to the public on its website as soon as practicable after receiving the information.

C. Any active or affiliate member of the State Bar of Arizona who fails to comply with this rule in a timely fashion may, on motion of the State Bar pursuant to Rule 62, be summarily suspended from the practice of law until such time as the lawyer or limited license legal practitioner complies. Supplying false information in complying with the requirements of this rule shall subject the lawyer or limited license legal practitioner to appropriate disciplinary action.

**(d) Powers of Board.** [[Only change is to subpart 2. As reflected below]]

2. Promote and aid in the advancement of the science of jurisprudence, the education of lawyers legal professionals and the improvement of the administration of justice.

**(e) – (g) [[No change]]**

**(h) Administration of rules.** Examination and admission of lawyer members shall be administered by the committee on examinations and the committee on character and fitness, as provided in these rules. Examination and licensure of limited license legal practitioners shall be administered by the Administrative Office of Courts as provided in ACJA 7-210. Licensure of alternative business structures shall be by the Committee on Alternative Business Structures, as provided in these rules and ACJA 7-209. Discipline, disability, and reinstatement matters shall be administered by the presiding disciplinary judge, as provided in these rules. All matters not otherwise specifically provided for shall be administered by the board.

**(i) – (j) [[No change]]**

**(k) Payment of Fees and Costs.** The payment of all fees, costs and expenses required under the provision of these rules related to membership, mandatory continuing legal education, discipline, ~~and~~ reinstatement and unauthorized practice of law shall be made to the State Bar. The payment of all fees, costs and expenses required under the application for admission to the practice of law, examinations and admission shall be made to the finance office of the administrative office of courts.

**(l) Expenses of Administration and Enforcement.** The state bar shall pay all expenses incident to the administration and enforcement of these rules relating to membership, mandatory continuing legal education, discipline, disability, and reinstatement of lawyers, including the membership, mandatory continuing legal education and disability of limited license legal practitioners, except that costs and expenses shall be taxed against a respondent ~~lawyer~~ or applicant for readmission, as provided in these rules. The administrative office of the courts shall pay all expenses incident to administration and enforcement of these rules relating to application for admission to the practice of law, examinations and admission, including expenses related to application for licensure and examination of limited license legal practitioners. The State Bar and Administrative Office of Courts may recoup extraordinary costs beyond the schedule of fees adopted by the Court relating to an alternative business structure application for licensure or administration and enforcement of these rules against an alternative business structure.

**(m) [[No change]]**

## **Proposed New Rule 33.1. Committee; Entity Regulation**

### **(a) Committee.**

1. *Creation of the Committee.* The examination of applications and recommendations to grant or deny licensure of alternative business structures shall conform to this rule and ACJA 7-209. For such purposes, there shall be a Committee on Alternative Business Structures. The Committee on Alternative Business Structures shall consist of eleven members.

2. *Appointment of Members.* Members of the Committee shall be appointed by the Court, considering geographical, gender, and ethnic diversity. Members shall serve at the pleasure of the Court and may be removed from the Committee at any time by order of the Court. A member of the Committee may resign at any time. The Chief Justice shall appoint the Committee chair.

3. *Terms of Office.* Members of the Committee will serve three-year terms, which will be staggered among members as designated by the Chief Justice. Members may be reappointed to successive terms. If a vacancy exists due to resignation or inability of a board member to serve, the Court shall appoint another person to serve the unexpired term.

4. *Powers and Duties of the Committee.* The Committee on Alternative Business Structures shall examine applications for licensure and recommend to the Court those applicants who are deemed by the Committee to be qualified and not qualified pursuant to ACJA § 7-209. The Court will then consider the recommendations and either grant or deny licensure.

5. *Review by Court.* The Committee's recommendation regarding an application for licensure will be transmitted to the Court for review as provided in 7-209(E). Upon receipt of the recommendation, the Court may decline review or issue an order approving, denying, or approving with modification the recommendation. Upon receipt of the Court's order, the Committee shall either grant or deny the application as directed.

### 6. *Response to Recommendation to Deny.*

A. An applicant affected by any recommendation of the Committee on Alternative Business Structures may, within twenty (20) days after such a recommendation has been filed with the Court file a response with the Court. The response should state the facts that form the basis for the response, and applicant's reasons for believing this Court should approve, deny, or modify the recommendation of the Committee.

B. A copy of the response must be promptly served upon the Committee. The

Committee will have thirty (30) days after service to transmit the applicant's file, including all findings and reports prepared by or for the Committee, and a reply to the response fully advising the Court as to the Committee's reason for its recommendation. Thereafter, the Court may hold any hearings or request additional information as necessary to decide whether to approve or deny the application or approve it with modification.

C. Any document filed under Rule 33.1(a)(6) is open to the public except that, upon request by an applicant, the Clerk will seal medical or psychological reports and records. An applicant may request the Court to seal a portion of any other materials submitted.

**(b) Decision Regarding Licensure.** The Committee shall recommend approval of applications if the requirements in this rule and in ACJA 7-209 are met by the applicant. The Committee's recommendation shall state the factors in favor of approval.

(1) Decisions of the Committee must take into consideration the following regulatory objectives:

(A) protecting and promoting the public interest;

(B) promoting access to legal services

(C) advancing the administration of justice and the rule of law;

(D) encouraging an independent, strong, diverse, and effective legal profession; and

(E) promoting and maintaining adherence to professional principles.

(2) The Committee shall examine whether an applicant has adequate governance structures and policies in place to ensure:

(A) lawyers providing legal services to consumers act with independence consistent with the lawyers' professional responsibilities;

(B) the alternative business structure maintains proper standards of work;

(C) the lawyer makes decisions in the best interest of clients;

(D) confidentiality consistent with Arizona Rule of Supreme Court 42 is maintained; and

(E) any other business policies or procedures that do not interfere with a lawyers' duties and responsibilities to clients.

**(c) Power of Court to Revoke or Suspend License.** Nothing contained in this rule shall be considered as a limitation upon the power and authority of this Court upon

petition of the Committee on Alternative Business Structures, probable cause committee, bar counsel, or on its own motion, to file a petition with the presiding disciplinary judge to revoke or suspend, after due notice and hearing, the license of an alternative business structure in this state for fraud or material misrepresentation in the procurement the ABS's license.

**(d) Practice in Courts.** No alternative business structure shall employ any person to provide legal services in the State of Arizona unless the person is licensed to practice law or otherwise authorized to provide legal services under Rule 31.1 or 31.3

**(e) Retention and Confidentiality of Records of Applicants.** The records of applicants for licensure pursuant to ACJA 7-209 shall be maintained and may be destroyed in accordance with approved retention and disposition schedules pursuant to administrative order of the Court, pursuant to Rule 29, Rules of Supreme Court. The records and the proceedings concerning an application for licensure shall remain confidential, except as otherwise provided in these rules. Bar counsel shall be allowed access to the records of applicants for licensure and the proceedings of the Committee concerning an application for licensure in connection with any proceeding before the Court. In addition, the Committee or designated staff may disclose their respective records pertaining to an applicant for licensure to:

1. any licensing authority in any other state the applicant seeks similar licensure;
2. bar counsel for discipline enforcement purposes; and
3. a law enforcement agency, upon subpoena or good cause shown.

**(f) Immunity from Civil Suit.**

1. The Court, the Board Committee, and the members, staff, employees, and agents thereof, are immune from all civil liability for conduct and communications occurring in the performance of their official duties relating to the licensing of applicants seeking to be licensed as an alternative business structure.

2. Records, statements of opinions and other information regarding an applicant for licensure communicated by any person, firm, or institution, without malice, to the Court or the Committee, and the members, staff, employees, and agents thereof, are privileged, and civil suits predicated thereon may not be instituted.



## **Rule 41. Duties and Obligations of Members<sup>4</sup>**

### **(a) Definition.**

“Unprofessional conduct” means substantial or repeated violations of the oath of Admission to the State Bar or the Lawyer’s Creed of Professionalism of the State Bar of Arizona. Unprofessional conduct includes substantial or repeated violations of the Limited License Legal Practitioner’s Creed of Professionalism.

**(b) Duties and Obligations.** The duties and obligations of members, including affiliate members, shall be:

(a 1) Those prescribed by the Arizona Rules of Professional Conduct adopted as Rule 42 of these Rules.

(b 2) To support the constitution and the laws of the United States and the State of Arizona.

(c 3) To maintain the respect due to courts of justice and judicial officers.

(d 4) To counsel or maintain no other action, proceeding or defense than those which appear to him legal and just, excepting the defense of a person charged with a public offense.

(e 5) To be honest in dealings with others and not make false or misleading statements of fact or law.

(f 6) To fulfill the duty of confidentiality to a client and not accept compensation for representing a client from anyone other than the client without the client’s knowledge and approval.

(g 7) To avoid engaging in unprofessional conduct and to advance no fact prejudicial to the honor or reputation of a party or a witness unless required by the duties to a client or the tribunal.

(h 8) To support the fair administration of justice, professionalism among lawyers and limited license legal practitioners, and legal representation for those unable to afford counsel.

(i 9) To protect the interests of current and former clients by planning for the lawyer’s termination of or inability to continue a law practice, either temporarily or permanently.

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<sup>4</sup> Definition of “unprofessional conduct”, Oath of Admission, and Lawyers Creed of Professionalism are inserted into Rule 41 due to their deletion in restyled Rule 31. The amendments to Rule 41 are to change the subsection numbering, without change or amendment from text in current Rule 31 and to include limited license legal practitioners in the definition of unprofessional conduct and make the Creed of Professionalism applicable to the limited license legal practitioners.

**(c) Oath and Creed.** The Oath of Admission to the Bar and Lawyer's and Limited License Legal Practitioner's Creed of Professionalism of the State Bar of Arizona are as follows.

**Oath of Admission to the Bar**

I, (state your name), do solemnly swear (or affirm) that I will support the constitution and laws of the United States and the State of Arizona;

I will treat the courts of justice and judicial officers with respect;

I will not counsel or maintain an action, proceeding, or defense that lacks a reasonable basis in fact or law;

I will be honest in my dealings with others and not make false or misleading statements of fact or law;

I will fulfill my duty of confidentiality to my client; I will not accept compensation for representing my client from anyone other than my client without my client's knowledge and approval;

I will avoid engaging in unprofessional conduct; I will not advance any fact prejudicial to the honor or reputation of a party or witness, unless required by my duties to my client or the tribunal;

I will at all times faithfully and diligently adhere to the rules of professional responsibility and A Lawyer's Creed of Professionalism of the State Bar of Arizona.

**A Lawyer's and Limited License Legal Practitioner's**  
**Creed of Professionalism of the State Bar of Arizona**

*Preamble*

As a [lawyer/limited license legal practitioner], I must strive to make our system of justice work fairly and efficiently. To carry out that responsibility, I will comply with the letter and spirit of the disciplinary standards applicable to all [lawyers/limited license legal practitioners] and I will conduct myself in accordance with the following Code of Professionalism when dealing with my client, opposing parties, their counsel, tribunals and the general public.

**A. With respect to my client:**

1. I will be loyal and committed to my client's cause, but I will not permit that loyalty and commitment to interfere with my ability to provide my client with objective and independent advice;
2. I will endeavor to achieve my client's lawful objectives in business transactions and in litigation as expeditiously and economically as possible;
3. In appropriate cases, I will counsel my client with respect to alternative methods of resolving disputes;
4. I will advise my client against pursuing litigation (or any other course of action) that is without merit and I will not engage in tactics that are intended to delay the resolution of a matter or to harass or drain the financial resources of the opposing party;
5. I will advise my client that civility and courtesy are not to be equated with weakness;
6. While I must abide by my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with effective and honorable representation.

**B. With respect to opposing parties and their counsel:**

1. I will be courteous and civil, both in oral and written communication;
2. I will not knowingly make statements of fact or law that are untrue;
3. In litigation proceedings, I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the substantive interests of my client will not be adversely affected;
4. I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;
5. I will not utilize litigation or any other course of conduct to harass the opposing party;
6. I will not engage in excessive and abusive discovery; and I will advise my client to comply with all reasonable discovery requests;
7. I will not threaten to seek sanctions against any party, ~~or lawyer,~~ or limited license legal practitioner unless I believe that they have a reasonable basis in fact and law;
8. I will not delay resolution of a matter, unless the delay is incidental to an action reasonably necessary to ensure the fair and efficient resolution of that matter;

9. In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and not be rude or disrespectful;
10. I will not serve motions and pleadings on the other party or the party's counsel at such a time or in such a manner as will unfairly limit the other party's opportunity to respond;
11. In business transactions I will not quarrel over matters of form or style but will concentrate on matters of substance and content;
12. I will identify clearly, for other counsel or parties, all changes that I have made in the documents submitted to me for review.

**C. With respect to the courts and other tribunals:**

1. I will be an honorable advocate on behalf of my client, recognizing, as an officer of the court, that unprofessional conduct is detrimental to the proper functioning of our system of justice;
2. Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;
3. I will voluntarily withdraw claims or defenses when it becomes apparent that they do not have merit;
4. I will not file frivolous motions;
5. I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;
6. I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;
7. When scheduled hearings or depositions have to be canceled, I will notify opposing counsel and, if appropriate, the court (or other tribunal) as early as possible;
8. Before dates for hearings or trial are set – or, if that is not feasible, immediately after such dates have been set – I will attempt to verify the availability of key participants and witnesses that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;
9. In civil matters, I will stipulate to facts as to which there is no genuine dispute;
10. I will endeavor to be punctual in attending court hearings, conferences, and dispositions;
11. I will at all times be candid with, and respectful to, the tribunal.

**D. With respect to the public and our system of justice:**

1. I will remember that, in addition to commitment to my client's cause, my responsibilities as a [lawyer/limited license legal practitioner] include a devotion to the public good;
2. I will keep current in the areas in which I practice and, when necessary, will associate with, or refer my client to, counsel knowledgeable in another field or practice;
3. As a member of a self-regulating profession, I will be mindful of my obligations under the Rules of Professional Conduct to report violations of those Rules;
4. I will be mindful of the need to protect the integrity of the legal profession and will be so guided when considering methods and contents of advertising;
5. I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement or administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance.

## **Rule 43. Trust Accounts**

**(a) Duty to Deposit Client Funds and Funds Belonging to Third Persons; Deposit of Funds Belonging to the Lawyer or Limited License Legal Practitioner.** Funds belonging in whole or in part to a client or third person in connection with a representation shall be kept separate and apart from the lawyer's or limited license legal practitioner's personal and business accounts. All such funds shall be deposited into one or more trust accounts that are labeled as such. The location of the trust account shall be controlled by the provisions of ER 1.15(a). No trust account required by this rule may have overdraft protection. No funds belonging to the lawyer, limited license legal practitioner, or law firm shall be deposited into a trust account established pursuant to this rule except as follows:

1. through 2. [[No change]]

3. Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the lawyer does not use a credit card processing service that permits the lawyer or limited license legal practitioner to direct such funds to the lawyer's or limited license legal practitioner's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.

4. Funds belonging in part to a client or third person and in part presently or potentially to the lawyer, limited license legal practitioner, or law firm must be deposited therein, but the portion belonging to the lawyer, or limited license legal practitioner or law firm must be withdrawn when due and legally available from the financial institution, or within a reasonable time thereafter, unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the lawyer or limited license legal practitioner shall comply with ER 1.15(e).

### **(b) Trust Account Requirements.**

#### *1. Standards of Performance.*

A. Due professional care must be exercised in the performance of the lawyer's or limited license legal practitioner's duties under this rule.

B. Employees and others assisting the attorneys or limited license legal practitioner's in the performance of such duties must be competent and properly trained and supervised.

C. Internal controls within the lawyer's or limited license legal practitioner's office must be adequate under the circumstances to safeguard funds or other property held in trust.

## *2. Trust Account Records.*

A. Every active and affiliate member of the state bar shall maintain, on a current basis, complete records of the handling, maintenance and disposition of all funds, securities and other property belonging in whole or in part to a client or third person in connection with a representation. These records shall include the records required by ER 1.15 and cover the entire time from receipt to the time of final disposition by the lawyer or limited license legal practitioner of all such funds, securities and other property. The lawyer or limited license legal practitioner shall preserve these records for a period of five years after termination of the representation.

B. A lawyer or limited license legal practitioner shall maintain or cause to be maintained an account ledger or the equivalent for each client, person or entity for which funds have been received in trust, showing:

(i) through (iii) [[No change]]

C. A lawyer or limited license legal practitioner shall make or cause to be made a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and the trust account bank statement.

D. A lawyer or limited license legal practitioner shall retain, in accordance with this rule, all trust account bank statements, cancelled pre-numbered checks (unless recorded on microfilm or stored electronically by a bank or other financial institution that maintains such records for the length of time required by this rule), other evidence of disbursements, duplicate deposit slips or the equivalent (which shall be sufficiently detailed to identify each item), client ledgers, trust account general ledger or register, and reports to clients.

E. A record shall be maintained showing all property, other than cash, held for clients or third persons in connection with a representation, including the date received, where located and when returned or otherwise distributed.

*3. Deposits from Credit Card Transactions.* A lawyer, limited license legal practitioner or ~~law~~ firm may permit funds from a credit card transaction to be deposited into a client trust account for payment of advance fees, costs or expenses, and merchant or credit card transaction fees, but only if:

A. the lawyer or limited license legal practitioner has sources of funds, other than client or third-party funds, available at the time of the credit card transaction to replace any funds that may be debited from the account due to a credit card chargeback and any associated fees or charges;

B. [[No change]]

C. the trust account contains sufficient funds of the lawyer, limited license legal practitioner or law firm at the time of the transaction to pay all merchant and credit card transaction fees, except to the extent such fees are paid by the client as part of the transaction.

4. *Disbursement Against Uncollected Funds.* A lawyer or limited license legal practitioner generally may not use, endanger, or encumber money held in trust for a client or third person without the permission of the owner given after full disclosure of the circumstances. Except for disbursements based upon any of the four categories of limited-risk uncollected deposits enumerated in paragraph A below, a lawyer or limited license legal practitioner may not disburse funds held in trust unless the funds are collected funds. For purposes of this provision, “collected funds” means funds deposited, finally settled by the issuer’s bank, and credited without recourse to the lawyer’s or limited license legal practitioner’s trust account.

A. Certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients and third persons owning trust account funds that may be affected by such disbursements. Notwithstanding that a deposit made to the lawyer’s or limited license legal practitioner’s trust account has not been finally settled and credited to the account, the lawyer or limited license legal practitioner may disburse funds from the trust account in reliance on such deposit under any of the following circumstances, if the lawyer or limited license legal practitioner has other sources of funds, other than client or third party funds, available at the time of disbursement to replace any uncollected funds:

(i) through (iv) [[No change]]

In any of the above circumstances, a lawyer’s or limited license legal practitioner’s disbursement of funds from a trust account in reliance on deposits that are not yet collected funds is at the risk of the lawyer or limited license legal practitioner making the disbursement. If any of the deposits fail, for any reason, the lawyer or limited license legal practitioner, upon receipt of notice or actual knowledge of the failure, must immediately act to protect the property of the lawyer’s or limited



license legal practitioner's clients and third persons. If the lawyer or limited license legal practitioner accepting any such check personally pays the amount of any failed deposit within three business days of receipt of notice that the deposit has failed, the lawyer or limited license legal practitioner will not be considered to have committed professional misconduct based upon the disbursement of uncollected funds.

B. A lawyer's or limited license legal practitioner's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those four categories set forth above, when it results in funds of clients or third persons being used, endangered, or encumbered, will be grounds for a finding of professional misconduct.

5. *Methods of Disbursement.* All trust account disbursements shall be made by pre-numbered check or by electronic transfer, provided the lawyer or limited license legal practitioner maintains a record of such disbursements in accordance with the requirements of this rule. All instruments of disbursement shall be identified as a disbursement from a trust account.

**(c) Certificate of Compliance.** Every active and affiliate member of the state bar shall on or before February 1 of each year file with the board a certificate certifying compliance with the provisions of this rule and ER 1.15 of the Arizona Rules of Professional Conduct, or that he or she is exempt from the provisions of this rule and ER 1.15. The certificate of compliance shall state as follows:

Annual Certificate of Compliance

[[No change]]

**(d) Trust Account Examination; Random Examination.**

1. *Authority.* The state bar shall evaluate all information coming to its attention by charge or otherwise indicating a possible violation of the trust account rules, and such information shall be treated and processed as is any other charge against a lawyer or limited license legal practitioner. In addition to trust account examinations that shall be conducted based upon information coming to the bar's attention, the state bar may also conduct random trust account examinations of any member's trust account(s), in accordance with Guidelines developed by the Board of Governors and approved by the supreme court.

2. *Scope of Examination.* [[No change]]

3. *Rebuttable Presumption.* If a lawyer or limited license legal practitioner fails to maintain trust account records required by this rule or ER 1.15, or fails to provide

trust account records to the state bar upon request or as ordered by a panelist, a hearing officer, the commission or the court, there is a rebuttable presumption that the lawyer or limited license legal practitioner failed to properly safeguard client or third person's funds or property, as required by this rule and ER 1.15.

4. *Limited Exception for Out-of-State Members.* All funds, securities and other property of clients and third persons held by an Arizona-licensed lawyer or limited license legal practitioner whose law office is situated in another state shall not be subject to investigation, examination or verification except to the extent such funds and property are related to matters affecting Arizona clients.

5. *Trust Account Examination and Verification Expenses.* [[No change]]

**(e) Confidentiality.** [[No change]]

**(f) Establishment of Trust Accounts; State Bar Oversight.**

1. A lawyer, limited license legal practitioner or law firm receiving funds belonging in whole or in part to a client or third person in connection with a representation must hold the funds in one of the following types of accounts:

A. a pooled interest-bearing or dividend-earning trust account ("IOLTA account") on which the interest or dividends accrue for the benefit of the Arizona Foundation for Legal Services and Education ("Foundation");

B. a separate interest-bearing or dividend-earning trust account for the particular client or client's matter on which the interest or dividends, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, will be paid to the client; or

C. a pooled interest-bearing or dividend-earning trust account, with subaccounting provided by the lawyer, limited license legal practitioner or the law firm, which will provide for computation of interest or dividends earned by each client's funds and the payment thereof, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, to the client.

2. In determining which type of account provided for in section (f)(1) to use, a lawyer, limited license legal practitioner or law firm shall take into consideration the following factors:

A. – C. [[No change]]

D. the cost of establishing and administering a separate non-IOLTA account for the client's benefit, including service charges, the costs of the lawyer's or limited license legal practitioner's services, and the costs of preparing any tax reports required for income accruing to the client's benefit;

E. – F. [[No change]]

Funds should be deposited in an IOLTA account as provided for in section (f)(1)(A) if the interest does not cover the cost of opening and maintaining a separate interest-bearing or dividend-earning account. The State Bar shall not pursue a disciplinary matter against any lawyer, limited license legal practitioner or ~~law~~ firm solely based on the good-faith determination of the appropriate account in which to deposit or invest client funds.

3. A lawyer, limited license legal practitioner or ~~law~~ firm must maintain any client trust account provided for in section (f)(1) only at a regulated financial institution, which is either (i) a financial institution authorized by federal or state law to take deposits and conduct financial transactions with Arizona lawyers or limited license legal practitioners and is insured by the Federal Deposit Insurance Corporation or any successor insurance corporation(s) established by federal or state laws or (ii) any open-ended investment company registered with the Securities and Exchange Commission that is authorized by federal or state law to take deposits and conduct financial transactions with Arizona lawyers. A regulated financial institution must agree to comply with the requirements of section (f)(4) below and agree to pay IOLTA interest to the Foundation. The lawyer, limited license legal practitioner or ~~law~~ firm must ensure that:

A. through C. [[No change]]

D. The financial institution sends notification immediately to the State Bar chief bar counsel of any properly payable instrument that is presented for payment against a client trust account containing insufficient funds, uncollectible funds, or a negative available balance, regardless of whether the financial institution honors the instrument. All occurrences shall be reported to the State Bar regardless of the cause.

If a financial institution ceases to operate as a regulated financial institution and has no successor operating as a regulated financial institution, a lawyer, limited license legal practitioner or ~~law~~ firm that maintains an account listed under section (f)(1) at that financial institution must, upon receiving notice of the financial institution's change in status, promptly notify any clients whose funds may be affected by the change in status, promptly transfer, to the extent possible, any client trust account funds from that financial institution into another account provided

for in section (f)(1), and promptly deposit into the other account provided for in section (f)(1) any insurance, collateral, or proceeds resulting from the financial institution's change in status.

4. In addition to the requirements of section (f)(3), a lawyer, limited license legal practitioner or ~~law~~ firm may only maintain an IOLTA account as provided for in section (f)(1)(A) at an authorized regulated financial institution. To be designated as authorized, a regulated financial institution must sign a participation certification before the fiscal year beginning July 1, with the State Bar as representative of its members, and the Foundation as a third-party beneficiary and administrator of the interest or dividends.

A. The participation certification must:

i. through ii. [[No change]]

iii. provide that the financial institution transmit, with each remittance to the Foundation, a statement, as directed by the Foundation, showing information including the name of the lawyer, limited license legal practitioner or ~~law~~ firm on whose account the remittance is sent, the period for the remittance submitted, the account number, the account status, the rate of interest applied or the dividends earned, and the charges imposed against the interest remitted;

iv. provide that the financial institution transmit a report on each separate account, similar to the report required by section (f)(4)(a)(iii), to the lawyer, limited license legal practitioner or ~~law~~ firm opening said trust account;

v. through vi. [[No change]]

vii. provide that the financial institution be allowed to charge a particular lawyer, limited license legal practitioner or ~~law~~ firm for the reasonable cost of producing the reports and records required by this rule;

viii. through xi. [[No change]].

B. through C. [[No change]]

5. through 6. [[No change]]

7. In addition to other obligations under section (f) of this rule, all lawyers admitted to practice or limited license legal practitioners in this state shall:

A. as a condition thereof, consent to the reporting and production requirements set forth in this rule, and

B. provide information requested by the State Bar on the annual dues statement regarding any and all client trust accounts they maintain.

**(g) [Reserved].**

**(h) Suspension of Member.** Any active or affiliate member who fails to comply with requirements of this rule shall be suspended summarily by order of the board upon notice by the state bar pursuant to Rule 62(a)(4), provided that a notice by certified, return receipt mail of such non-compliance shall have been sent to the member, mailed to the member's last address of record in the state bar office at least thirty days prior to such suspension.

**(i) Reinstatement of Member.** A lawyer or limited license legal practitioner who has been suspended for failure to comply with this rule may be reinstated by compliance with those provisions and notice to the board by the state bar of such compliance.

**(j) Applicability of Rule.** Every lawyer admitted to practice law in Arizona or limited license legal practitioner shall comply with the provisions of this rule regarding funds received, disbursed or held in Arizona, and funds received, disbursed or held on behalf of an Arizona client or a third person in connection with the representation of an Arizona client.

## **Rule 46. Jurisdiction in Discipline and Disability Matters; Definitions**

**(a) Lawyers Admitted to Practice.** [[No change]]

**(b) Licensed Alternative Business Structures.** Any alternative business structure and its members are subject to the disciplinary jurisdiction of this court. Any false statement or misrepresentation made by an applicant for licensure which is not discovered until after the applicant is licensed may serve as an independent ground for the imposition of discipline under these rules and ACJA § 7-209 and an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant for licensure may result in revocation of the alternative business structure's license.

**(c) Limited License Legal Practitioners.** Any person licensed as a limited license legal practitioner is subject to the disciplinary jurisdiction of this court and the authority delegated in these rules to the board of governors of the state bar. Any false statement or misrepresentation made by an applicant for licensure which is not discovered until after the applicant is licensed may serve as an independent ground for the imposition of discipline under these rules and ACJA § 7-210 and an aggravating factor in any disciplinary proceeding based on other conduct. Any fraudulent misstatement or material misrepresentation made by an applicant may result in revocation of the limited license legal practitioner's license.

**(b d) Non-members.** [[No change to text]]

**(e e) Former Judges.** [[No change to text]]

**(d f) Incumbent Judges.** [[No change to text]]

**(e g) Disbarred Lawyers.** [[No change to text]]

**(f h) Definitions.** When the context so requires, the following definitions shall apply to the interpretation of these rules relating to discipline, disability and reinstatement of lawyers, limited license legal practitioners, and alternative business structures:

1. "Acting presiding disciplinary judge" -- 4. "Charge" [[No change]]

5. "Committee" means the Attorney Discipline Probable Cause Committee of the Supreme Court of Arizona unless stated otherwise.

6. "Complainant" means a person who initiates a charge against a lawyer, ~~or~~ alternative business structure, or limited license legal practitioner or later joins in a charge to the state bar regarding the conduct of a lawyer, alternative business structure, or limited license legal practitioner. The complainant will be provided information as set forth in Rule 53, unless specifically waived by the complainant. The state bar or any bar counsel may be complainant.

7. “Complaint” -- 9. “Court” [[No change]]

10. “Discipline” means those sanctions and limitations on members and the practice of law provided in these rules, including those sanctions and limitations provided in these rules and ACJA 7-209 for alternative business structures and ACJA 7-210 for limited license legal practitioners. Discipline is distinct from diversion or disability inactive status, but the term may include that status where the context so requires.

11. “Disciplinary clerk” -- 16. “Member” [[No change]]

17. “Misconduct” means any conduct sanctionable under these rules, including unprofessional conduct as defined in Rule ~~31(a)(2)(E)~~ 41(a) or conduct that is eligible for diversion, any conduct by an alternative business structure actionable under these rules or ACJA 7-209, or any conduct by a limited license legal practitioner actionable under these rules or ACJA 7-210.

18. “Non-member” -- 20. “Record,” [[No change]]

21. “Respondent” means a member, including limited license legal practitioner or non-member, including an ABS or its nonlawyer members, against whom a discipline or disability proceeding has been commenced.

22. “Settlement officer” -- 24. “State bar file” [[No change]]

## **Rule 47. General Procedural Matters**

### **(a) - (b) [[No change]]**

**(c) Service.** Service of the complaint, pleadings and subpoenas shall be effectuated as provided in the Rules of Civil Procedure, except as otherwise provided herein. Personal service of complaints and subpoenas may be made by staff examiners employed by the state bar.

#### *1. Service of Complaint.*

(A) Individual Respondents. Service of the complaint in any discipline or disability proceeding may be made on respondent or respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by counsel or respondent to the state bar's membership records department pursuant to Rule 32(c)(4)(iii) 32(e)(3). When service of the complaint is made by mail, bar counsel shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

(B) ABS Respondents. Service of the complaint in any discipline proceeding against an ABS or its members may be made on the designated agent for service per ACJA 7-209 or the respondent's counsel, if any, by certified mail/delivery restricted to addressee in addition to regular first class mail, sent to the last address provided by respondent, respondent's counsel, or the designated agent for service pursuant to ACJA 7-209. When service of the complaint is made by mail, bar counsel shall file a notice of service with the disciplinary clerk, indicating the date and manner of mailing, and service shall be deemed complete five (5) days after the date of mailing.

#### *2. Service of Subpoena.* [[No change]]

### **(d) - (l) [[No change]]**



## **Rule 48. Rules of Construction**

**(a) – (c) [[No change]]**

**(d) Standard of Proof.**

1. *Lawyers and Limited License Legal Practitioners.* Allegations in a complaint, applications for reinstatement, petitions for transfer to and from disability inactive status and competency determinations shall be established by clear and convincing evidence. In discipline proceedings that include allegations of trust account violations, there shall be a rebuttable presumption that any lawyer or limited license legal practitioner who fails to maintain trust account records as required by ER 1.15 or Rule 43, Ariz. R. S. Ct, or who fails to provide trust account records to the state bar upon request or as ordered by the committee, the presiding disciplinary judge, or the court, has failed to properly safeguard client or third-party funds or property, as required by the provisions of ER 1.15 or Rule 43, Ariz. R. S. Ct.

2. *Alternative Business Structures.* Allegations in a complaint or applications for reinstatement, shall be established by clear and convincing evidence. In discipline proceedings that include allegations of trust account violations, there shall be a rebuttable presumption that any ABS that fails to maintain trust account records as required by ER 1.15 or Rule 43, Ariz. R. S. Ct, or that fails to provide trust account records to the state bar upon request or as ordered by the committee, the presiding disciplinary judge, or the court, has failed to properly safeguard client or third-party funds or property, as required by the provisions of ER 1.15 or Rule 43, Ariz. R. S. Ct.

**(e) Burden of Proof.** The burden of proof in proceedings seeking discipline is on the state bar. That burden is on the petitioning party in proceedings seeking transfer to disability inactive status. That burden in proceedings seeking reinstatement and transfer from disability inactive status is on respondent or applicant. The burden on an alternative business structure seeking licensure after a period of revocation or suspension is on respondent alternative business structure.

**(f) – (i) [[No change]]**

## **Rule 49. Bar Counsel**

**(a) - (b) [[No change]]**

**(c) Powers and Duties of Chief Bar Counsel.** Acting under the authority granted by this Court and under the direction of the executive director, chief bar counsel shall have the following powers and duties:

1. *Prosecutorial Oversight.* Chief bar counsel shall maintain and supervise a central office for the filing of requests for investigation relating to conduct by a member, including an affiliate member, or non-member, including alternative business structures, and for the coordination of such investigations; supervise staff needed for the performance of all discipline functions within the responsibility of the state bar, overseeing and directing the investigation and prosecution of discipline cases and the administration of disability, reinstatement matters, and contempt proceedings, and compiling statistics regarding the processing of cases by the state bar.

2. *Dissemination of Discipline and Disability Information.*

A. Notice to Disciplinary Agencies. [[No change]]

B. Disclosure to National Discipline Data Bank. [[No change]]

C. Public Notice of Discipline Imposed. Chief bar counsel shall cause notices of orders or judgments of reprimand, suspension, disbarment, transfers to and from disability status and reinstatement as well as all sanctions against alternative business structures to be published in the Arizona Attorney or another usual periodic publication of the state bar, and shall send such notices to a newspaper of general circulation in each county where the lawyer maintained an office for the practice of law. Notices of sanctions or orders shall be posted on the state bar's website as follows:

(i) – (v) [[No change]]

(vi) Revocation, suspension, reprimand, and licensing after a period of revocation involving an alternative business structure shall be posted for an indefinite period of time.

D. Notice to Courts. [[No change]]

3. *Report.* [[No change]]

**(d) [[No change]]**

## **Rule 50. Attorney Discipline Probable Cause Committee**

**(a) – (d) [[No change]]**

**(e) Powers and Duties of the Committee.** Unless otherwise provided in these rules, the committee shall be authorized and empowered to act in accordance with Rule 55 and as otherwise provided in these rules, including ACJA 7-209 and 7-210, and to:

1. meet and take action, as deemed appropriate by the chair, in no less than three-person panels, each of which shall include a public member and a lawyer member (all members of the panel must participate in the vote and a majority of the votes shall decide the matter, a member of the panel may participate by remote access, and the quorum requirements of paragraph (f) do not apply to panels under this paragraph);

2. periodically report to the court on the operation of the committee;

3. recommend to the court proposed changes or additions to the rules of procedure for ~~attorney~~ discipline and disability proceedings; and

4. adopt such procedures as may from time to time become necessary to govern the internal operation of the committee, as approved by the court.

**(f) – (h) [[No change]]**

## **Rule 51. Presiding Disciplinary Judge**

**(a) – (b) [[No change]]**

**(c) Powers and Duties of the Presiding Disciplinary Judge.** The presiding disciplinary judge shall be authorized to act in accordance with these rules and to:

1. – 2. [[No change]]

3. impose discipline on an attorney, alternative business structure, or limited license legal practitioner; transfer an attorney or limited license legal practitioner to disability inactive status; and serve as a member of a hearing panel in discipline and disability proceedings, as provided in these rules;

4. – 6. [[No change]]

7. recommend to the court proposed changes or additions to the rules of procedure for attorney and limited license legal practitioner discipline and disability proceedings, and to rules and ACJA 7-209 and 7-210 governing discipline of alternative business structures and limited license legal practitioners; and

8. adopt such practices as may from time to time become necessary to govern the internal operation of the office of the presiding disciplinary judge, as approved by the supreme court.

**(d) [[No change]]**

## **Rule 54. Grounds for Discipline**

Grounds for discipline of members, including affiliate members, and non-members, and alternative business structures include the following:

**(a) – (h) [[No change]]**

**(i) Unprofessional conduct as defined in Rule ~~31(a)(2)(E)~~ 41(a).**

**(j) Violations of ACJA 7-209.**

**(k) Violations of ACJA 7-210.**

## **Rule 55. Initiation of Proceedings; Investigation**

**(a) Commencement; Determination to Proceed.** Bar counsel shall evaluate all information coming to its attention, in any form, by charge or otherwise, alleging unprofessional conduct, misconduct or incapacity. This shall include any allegation involving a violation of these rules or ACJA 7-209 or ACJA 7-210 by alternative business structures and limited license legal practitioners.

1. If bar counsel determines the lawyer, alternative business structure, or a limited license legal practitioner is not subject to the disciplinary jurisdiction of the supreme court, bar counsel shall refer the information to the appropriate entity.

2. If bar counsel determines the lawyer, alternative business structure, or limited license legal practitioner is subject to the disciplinary jurisdiction of the court, bar counsel shall, in the exercise of bar counsel's discretion, resolve the matter in one of the following ways:

A. – C. [[No change]]

**(b) Screening Investigation and Recommendation by Bar Counsel.** When a determination is made to proceed with a screening investigation, the investigation shall be conducted or supervised by bar counsel. Bar counsel shall give the respondent written notice that ~~he or she is~~ respondent is under investigation and of the nature of the allegations. No disposition adverse to the respondent shall be recommended by bar counsel until the respondent has been afforded an opportunity to respond in writing to the charge.

1. *Response to Allegations.* [[No change]]

2. *Action Taken by Bar Counsel.* [[No change]]

**(c) [[No change]]**

## **Rule 56. Diversion**

### **(a) [[No change]]**

**(b) Referral to Diversion.** Bar counsel, the committee, the presiding disciplinary judge, a hearing panel, or the court may offer diversion to ~~the~~ an attorney, alternative business structure, or limited license legal practitioner based upon the Diversion Guidelines recommended by the board and approved by the court. The Diversion Guidelines shall be posted on the state bar and supreme court websites. Where the conduct so warrants, diversion may be offered if:

1. the lawyer, alternative business structure, or limited license legal practitioner committed professional misconduct, the lawyer is incapacitated, or the lawyer, alternative business structure, or limited license legal practitioner does not wish to contest the evidence of misconduct and bar counsel and the respondent agree that diversion will be appropriate;
2. the conduct could not be the basis of a motion for transfer to disability inactive status pursuant to Rule 63 of these rules;
3. the cause or basis of the professional misconduct by an individual lawyer, alternative business structure, or limited license legal practitioner or incapacity of an individual lawyer or limited license legal practitioner is subject to remediation or resolution through alternative programs or mechanisms, including:

#### A. – E. [[No change]]

4. the public interest and the welfare of the respondent's clients and prospective clients will not be harmed if, instead of the matter proceeding immediately to a disciplinary or disability proceeding, the lawyer or limited license legal practitioner agrees to and complies with specific measures that, if pursued, will remedy the immediate problem and likely prevent any recurrence of it; and
5. the terms and conditions of the diversion plan can be adequately supervised.

**(c) Diversion agreement or order.** If diversion is offered and accepted prior to an investigation pursuant to Rule 55(b), the agreement shall be between the attorney, alternative business structure or limited license legal practitioner and bar counsel. If bar counsel recommends diversion after an investigation pursuant to Rule 55(b) but before authorization to file a complaint, the recommendation for an order of diversion shall be submitted to the committee for consideration. If the committee rejects the recommendation, the matter shall proceed as otherwise provided in these rules. If diversion is offered and accepted after authorization to file a complaint, the matter shall proceed pursuant to Rule 57. If the presiding

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disciplinary judge rejects the diversion agreement, the matter shall proceed as provided in these rules.



## **Rule 57. Special Discipline Proceedings**

### **(a) Discipline by Consent.**

1. *Consent to Discipline.* [[No change]]

2. *Form of Agreement.* An agreement for discipline by consent shall be signed by respondent, respondent's counsel, if any, and bar counsel. An agreement shall include the following:

A. ~~Rule~~ Violations. Each count alleged in the charge or complaint shall be addressed in the agreement, including a statement as to the specific disciplinary rule or ACJA section that was violated, or conditionally admitted to having been violated, and the facts necessary to support the alleged violation, conditional admission, or decision to dismiss a count.

B. Forms of Discipline. -- F. Use of Standardized Documents. [[No change]]

3. *Procedure.* [[No change]]

4. *Presiding Disciplinary Judge Decision.* [[No change]]

5. *Disbarment by Consent.* [[No Change]]

**(b) [[No Change]]**

## Rule 58. Formal Proceedings

**(a) Complaint.** Formal discipline proceedings shall be instituted by bar counsel filing a complaint or agreement for discipline by consent with the disciplinary clerk. The complaint shall be sufficiently clear and specific to inform a respondent of the alleged misconduct. The existence of prior sanctions or a prior course of conduct may be stated in the complaint if the existence of the prior sanction or course of conduct is necessary to prove the conduct alleged in the complaint.

1. *Form.* The complaint against any respondent and all subsequent pleadings filed before the presiding disciplinary judge should be captioned to identify the type of respondent: member of the State Bar of Arizona, licensed alternative business structure, or limited license legal practitioner.

### BEFORE THE PRESIDING DISCIPLINARY JUDGE

<del>In the Matter of a Member</del>	}
<del>of the State Bar of Arizona,</del>	}
<del>(Name)</del>	}
<del>Bar No./License No. 000000</del>	}

2. *Service of Complaint.* [[No change]]

**(b) – (j)** [[No change]]

**(k) Decision.** Within thirty (30) days after completion of the formal hearing proceedings or receipt of the transcript, whichever is later, the hearing panel shall prepare and file with the disciplinary clerk a written decision containing findings of fact, conclusions of law and an order regarding discipline, together with a record of the proceedings. Sanctions imposed against lawyers and limited license legal practitioners shall be determined in accordance with the American Bar Association *Standards for Imposing Lawyer Sanctions* and, if appropriate, a proportionality analysis. Sanctions imposed against an ABS shall be determined in accordance ACJA 7-209 and to the extent applicable, with the American Bar Association *Standards for Imposing Lawyer Sanctions*. The decision shall be signed by each member of the hearing panel. Two members are required to make a decision. A member of the hearing panel who dissents shall also sign the decision and indicate the basis of the dissent in the decision. The disciplinary clerk shall serve a copy of the decision on respondent and on bar counsel of record. The hearing panel shall notify the parties when the decision will be filed outside the time limits of this rule and shall state the reason for the delay. The decision of the hearing panel is final, subject to the parties' appeal rights as set forth in Rule 59.

## **Rule 60. Sanctions**

**(a) Types and Forms of Sanctions, Attorneys.** Misconduct by an attorney, individually or in concert with others, shall be grounds for imposition of one or more of the following sanctions:

1. *Disbarment.* [[No change]]
2. *Suspension.* [[No change]]
3. *Reprimand.* [[No change]]
4. *Admonition.* [[No change]]
5. *Probation.* [[No change]]
6. *Restitution.* [[No change]]

**(b) Types and Forms of Sanctions, Alternative Business Structures.** Misconduct by an ABS shall be grounds for imposition of one or more of the sanctions provided for in these rules and ACJA 7-209.

**(c) Types and Forms of Sanctions, Limited License Legal Practitioner.** Misconduct by a limited license legal practitioner shall be grounds for imposition of one or more of the sanctions provided for in these rules and ACJA 7-210.

**(b d) Assessment of the Costs and Expenses.** [[No change to text]]

**(e e) Enforcement.** [[No change to text]]

### **Rule 63. Transfer to Disability Inactive Status**

**(a) Purpose.** A lawyer or limited license legal practitioner whose physical or mental condition adversely affects the lawyer's or limited license legal practitioner's ability to practice law shall be investigated, and where warranted, shall be the subject of formal proceedings to determine whether the lawyer or limited license legal practitioner shall be transferred to disability inactive status. Transfer to disability inactive status is not a form of discipline but is designed to ensure the protection of the public and rehabilitation of the lawyer. Orders of transfer may include conditions of conduct in the nature of probation, and consent orders shall be encouraged.

#### **(b) Method of Transfer**

1. *Judicial determinations of incapacity.* If a lawyer or limited license legal practitioner has been judicially declared incompetent, incompetent to stand trial, or is voluntarily or involuntarily committed on the grounds of incompetency or other disability or incapacity in a court proceeding, the presiding disciplinary judge, upon motion of bar counsel and proper proof of the fact, shall enter an order of transfer immediately transferring the lawyer or limited license legal practitioner to disability inactive status for an indefinite period until further order. A copy of the order shall be personally served upon the clerk of the court, the lawyer or limited license legal practitioner, the lawyer's or limited license legal practitioner's guardian and conservator, and the director of the institution to which the lawyer or limited license legal practitioner may have been committed.

2. *Interim order of incapacity.* When it appears to the state bar, the committee, the presiding disciplinary judge, or the hearing panel that a lawyer or limited license legal practitioner may be incapacitated to the extent that the lawyer or limited license legal practitioner may be causing harm to the public, the legal profession or the administration of justice by reason of a mental or physical condition or because of addiction to drugs or intoxicants, bar counsel may file a motion, setting forth facts to support a prima facie finding of incapacity and accompanied by verification or affidavit, with the disciplinary clerk, for an order temporarily transferring the lawyer or limited license legal practitioner to disability inactive status pending a hearing to determine incapacity as provided in this rule.

3. *Finding of incapacity to discharge duty.* If it is alleged by a lawyer or limited license legal practitioner or otherwise appears in the course of a discipline proceeding that the lawyer or limited license legal practitioner is incapacitated or impaired by reason of a mental or physical condition or because of addiction to drugs or intoxicants, and the lawyer or limited license legal practitioner lacks the

capacity to adequately discharge the lawyer's or limited license legal practitioner's duty to clients, the bar, the courts or the public, a petition may be filed with the disciplinary clerk by bar counsel, on bar counsel's own initiative or upon a recommendation of the committee, the presiding disciplinary judge, or the lawyer or limited license legal practitioner alleged to be incapacitated.

4. *Finding of Incompetency to Assist in Defense.* If it is alleged by a lawyer or limited license legal practitioner or otherwise appears in the course of a discipline or disability proceeding that the lawyer is unable to understand the proceedings or assist in the lawyer's or limited license legal practitioner's defense as a result of a mental or physical condition, the presiding disciplinary judge, sua sponte, or upon motion of bar counsel, shall immediately transfer the lawyer or limited license legal practitioner to disability inactive status on a temporary basis pending a determination of competency, and all pending discipline proceedings shall be temporarily stayed. When a lawyer files a petition requesting transfer to disability inactive status alleging incompetence to assist in the lawyer's or limited license legal practitioner's defense, the petition shall be processed according to paragraph (c) of this rule.

5. *By consent agreement.* An agreement for transfer to disability inactive status must be signed by the lawyer or limited license legal practitioner, the lawyer's or limited license legal practitioner's counsel, if any, and bar counsel.

A. General language. Agreements must include the following language as applicable:

(i) a statement describing the nature and extent of the lawyer's or limited license legal practitioner's physical or mental condition that adversely affects his or her ability to practice law warranting transfer to disability inactive status;

(ii) a statement that the order of transfer to disability inactive status may include conditions of conduct in the nature of probation;

(iii) a statement that the lawyer's or limited license legal practitioner's consent to be transferred to disability inactive status is submitted freely and voluntarily and not as a result of coercion or intimidation;

(iv) a statement that the lawyer or limited license legal practitioner is represented by counsel, has chosen not to seek the assistance of counsel or is unable to secure representation by counsel;

(v) a statement that the lawyer or limited license legal practitioner voluntarily waives the right to an adjudicatory hearing on the transfer, unless otherwise ordered, and waives all motions, defenses, objections, or requests which have been made or raised, or could be asserted thereafter, if the transfer is approved;

(vi) a statement that the lawyer or limited license legal practitioner acknowledges the duty to comply with all rules pertaining to notification of clients, return of property, and other rules pertaining to suspension, including reinstatement;

(vii) - (ix) [[No change]]

B. Evaluations. - C. Hearing. [[No change]]

**(c) Proceedings to Determine Incapacity or Competence.**

1. *Petition.* A petition requesting transfer to disability inactive status may be filed with the disciplinary clerk by bar counsel, on bar counsel's own initiative or upon a recommendation of the committee, the presiding disciplinary judge, or the lawyer or limited license legal practitioner alleged to be incapacitated. The petition shall be accompanied by affidavits, reports, or other documentation to support a prima facie finding of incapacity.

2. *Service.* [[No change]]

3. *Appointment of Counsel.* The presiding disciplinary judge may appoint counsel to represent the lawyer or limited license legal practitioner alleged to be incapacitated if the lawyer or limited license legal practitioner is without adequate representation and the presiding disciplinary judge determines there is prima facie evidence of incapacity. The presiding disciplinary judge shall appoint counsel to represent a lawyer or limited license legal practitioner who is without representation in proceedings to determine competency.

4. *Hearing.*

A. Incapacity to Discharge Duty. The presiding disciplinary judge may take or direct whatever action deemed necessary or proper to determine whether the lawyer or limited license legal practitioner is incapacitated, including directing examination of the lawyer or limited license legal practitioner by qualified experts designated by the presiding disciplinary judge at the expense of the state bar. The petitioner shall have the burden of proving by clear and convincing evidence, which shall include a relevant and recent medical, psychiatric or psychological evaluation, that, as a result of a mental or physical condition, the lawyer or limited license legal practitioner lacks the capacity to adequately discharge the lawyer's or limited license legal practitioner's duty to clients, the bar, the courts or the public.

B. Competency to Assist in Defense. The presiding disciplinary judge may take or direct whatever action deemed necessary or proper to determine whether the lawyer or limited license legal practitioner is competent,

including directing examination of the lawyer by qualified experts. Upon the filing of a disability petition, the state bar may also direct a lawyer to submit to an independent medical or mental evaluation by a qualified expert chosen by the state bar. The mere presence of a mental illness, defect, or disability or physical incapacity is not grounds for finding a lawyer incompetent. The only issue to be determined is whether the lawyer or limited license legal practitioner is able to assist in the lawyer's or limited license legal practitioner's own defense. To assist in the lawyer's or limited license legal practitioner's own defense, the lawyer or limited license legal practitioner needs to understand the charges, be able to communicate with the lawyer's or limited license legal practitioner's attorney about the charges and any defense to those charges, and be able to testify about relevant conduct in the disciplinary proceeding. The expense for the evaluation shall be paid by the petitioner, unless otherwise ordered by the presiding disciplinary judge.

*5. Report of presiding disciplinary judge.* Within thirty (30) days after the hearing or the filing of the post-hearing memoranda or stipulation, the presiding disciplinary judge shall prepare and file with the disciplinary clerk a decision and order containing findings of fact and conclusions concerning transfer to disability inactive status based on a determination of incapacity to discharge duty or competency to assist in defense. The presiding disciplinary judge shall also serve a copy of the report and the order transferring the lawyer or limited license legal practitioner to disability inactive status on the parties. Thereafter, the lawyer or limited license legal practitioner shall be transferred to disability inactive status subject to a right to appeal. If a party does not appeal the order of transfer, the presiding disciplinary judge shall notify the court of same by memorandum, and the decision shall be final.

*6. Appeal.* [[No change]]

**(d) Status of Pending Disciplinary Proceedings.**

*1. Incapacity to Discharge Duty.* An order transferring a lawyer or limited license legal practitioner to disability inactive status based on a finding that a lawyer or limited license legal practitioner is unable to discharge his or her duties to clients, the bar, the courts or the public does not affect any pending disciplinary proceedings, which shall continue, or if previously stayed, shall resume. Upon a showing of good cause, however, the presiding disciplinary judge or the court may order that all pending discipline proceedings be stayed. If pending discipline cases are stayed, any investigation may continue and testimony may be taken and other evidence preserved pending further proceedings. If information comes to the attention of bar counsel that good cause no longer supports the stay, the stay may be reviewed according to the procedure set forth for an order to show cause in paragraph (d)(3)

of this rule.

2. *Competency to Assist in Defense.* If the presiding disciplinary judge or this court determines a lawyer or limited license legal practitioner is not competent to assist in the lawyer's or limited license legal practitioner's own defense, discipline proceedings shall be stayed, and the lawyer or limited license legal practitioner placed or retained on disability inactive status until an application for transfer to active status is filed and subsequently granted. If, after the filing of a petition for order to show cause pursuant to paragraph (d)(3) of this rule, a decision that the lawyer is competent to assist in the lawyer's or limited license legal practitioner's own defense becomes final, the temporary order of transfer to disability status shall be vacated by the presiding disciplinary judge or the court and the discipline proceedings shall resume.

3. *Order to Show Cause.*

A. *Petition.* In the case of a lawyer or limited license legal practitioner who has been transferred to disability inactive status, if information comes to the attention of the state bar indicating that good cause no longer exists to maintain a stay imposed pursuant to paragraph (d)(1) of this rule, or that the lawyer or limited license legal practitioner appears no longer to be incompetent and a stay imposed pursuant to paragraph (d)(2) of this rule is no longer appropriate, bar counsel shall file with the disciplinary clerk a petition for order to show cause.

B. *Hearing.* The presiding disciplinary judge shall issue an order requiring the lawyer or limited license legal practitioner to show cause why an existing stay of pending discipline proceedings imposed upon a showing of good cause or upon a finding of incompetency should not be lifted. The only issue to be addressed at the hearing is whether such a stay should be lifted.

C. *Decision and Order of presiding disciplinary judge.* The presiding disciplinary judge shall, as soon as practicable, prepare and file with the disciplinary clerk a decision containing findings of fact and an order concerning whether the stay should be lifted. The presiding disciplinary judge shall also serve a copy of the decision and order on the parties. Any such order is subject to appellate review by the court. If an order is entered finding that an existing stay is no longer supported by good cause, or if an order is entered finding that a lawyer or limited license legal practitioner is no longer incompetent, and if the time to appeal has expired, any stayed discipline proceedings shall resume.

D. *Appeal and Review.* Appeal from the presiding disciplinary judge's order shall be as set forth in paragraphs (c)(6) of this rule. If the court accepts



the presiding disciplinary judge's finding that an existing stay is no longer supported by good cause or that a lawyer or limited license legal practitioner is no longer incompetent, any stayed discipline proceedings shall resume.

**(e) Confidentiality of Disability Proceedings.** Proceedings and records relating to transfer to or from disability inactive status, including determinations of competency, are confidential, except that orders transferring a lawyer or limited license legal practitioner to or from disability inactive status are public.

**(f) Assessment of Costs.** [[No change]]

**(g) Reinstatement to Active Status.**

1. *Application.* [[No change]]

2. *Waiver of Doctor-Patient Privilege.* The filing of an application for transfer to active status by a lawyer or limited license legal practitioner transferred to disability inactive status shall constitute a waiver of any doctor-patient privilege with respect to any treatment of the lawyer or limited license legal practitioner during the period of disability. The lawyer or limited license legal practitioner shall be required to disclose the name of each psychiatrist, psychologist, physician or other health care provider, and hospital or other institution by whom or in which the lawyer or limited license legal practitioner has been examined or treated since the lawyer's or limited license legal practitioner's transfer to disability inactive status. The lawyer or limited license legal practitioner shall furnish to the presiding disciplinary judge or this court written authorization to each health care provider and facility to release information and records relating to the disability if requested by the presiding disciplinary judge, this court or appointed medical experts.

3. *Reinstatement.* No lawyer or limited license legal practitioner transferred to disability inactive status may resume active status until reinstated by order of this court. A lawyer or limited license legal practitioner shall be entitled to apply for transfer to active status at any time at least one year after the lawyer's last application or at such shorter intervals as the court or the presiding disciplinary judge may direct in the order transferring the lawyer to disability inactive status or any modification thereof. The application shall be granted upon a showing, by clear and convincing evidence, that the lawyer's or limited license legal practitioner's mental or physical condition has been removed and the lawyer or limited license legal practitioner is fit to resume the practice of law. In its discretion, the hearing panel or the court may direct that the lawyer or limited license legal practitioner establish proof of competence and learning in law, which proof may include certification by the bar examiners of the lawyer's or limited license legal practitioner's successful completion of an examination for admission to practice, notwithstanding the lawyer or limited license legal practitioner was on inactive status less than five years. If a

lawyer or limited license legal practitioner has been transferred to disability inactive status by an order in accordance with these rules and, thereafter, has been judicially declared to be no longer under disability, the hearing panel may dispense with further evidence that the disability has been removed and may recommend the lawyer's or limited license legal practitioner's reinstatement to active status upon such terms as are deemed appropriate.

4. *Pending Discipline.* [[No change]]

## **Rule 66. Appointment of Conservator to Protect Client Interests.**

**(a) Appointment of Conservator.** The state bar or any other interested person may petition the presiding judge of a superior court or the presiding judge's designee ("appointing judge") to appoint one or more eligible persons to act as conservators of the client files and records, client trust accounts and such other affairs of a lawyer or limited license legal practitioner or formerly admitted lawyer or formerly limited license legal practitioner, as the appointing judge determines appropriate. There shall be no filing fee for petitions for conservator under this rule. The appointing judge shall appoint a conservator if the lawyer or limited license legal practitioner maintains or has maintained a law practice within the county, no partner or other responsible successor to the practice of the lawyer or limited license legal practitioner is known to exist, and:

1. the lawyer or limited license legal practitioner is made the subject of an order of interim suspension and related matters; or
2. the appointing judge by order directs the state bar to file an application under this rule; or
3. the lawyer or limited license legal practitioner is transferred to inactive status because of incapacity or disability, or disappears or dies; or
4. where other reasons requiring protection of the public are shown.

**(b) Service of Petition.** A copy of the petition and any related order to show cause shall be personally served upon the respondent lawyer or limited license legal practitioner, the state bar, and upon other persons as provided in Rule 63 governing transfer to disability inactive status. Upon affidavit of petitioner or the state bar that diligent efforts have failed to reveal the whereabouts of respondent, or that respondent is evading service, service shall be made on the respondent by certified mail/delivery restricted to addressee in addition to regular first-class mail, sent to the last address provided by the respondent to the state bar pursuant to Rule 32(c)(3). When service of the petition is made by mail, the state bar shall file a notice of service in the conservatorship matter indicating the time and manner of mailing. Service shall be deemed complete when the notice is filed.

**(c) – (e) [[no change]]**

## **Rule 67. Duties of Conservator**

**(a) - (b) [[no change]]**

**(c) Written Notice to Clients of Conservatorship.** The conservator shall send written notice to all clients listed in the inventory of the fact of the appointment of a conservator, the grounds that required such appointment, and the possible need of the clients to obtain substitute counsel or limited license legal practitioner. Written notice shall be by first class mail to the client's last known address, as ascertained from a review of the client's file.

**(d) Return of Files.** A file in the conservator's possession or control shall be returned to a client upon the execution of a written receipt, or released to substitute counsel or limited license legal practitioner upon the request of the client and execution of a written receipt by such counsel or limited license legal practitioner.

**(e) [[no change]]**

**(f) Conservator-Client Relationship.** Neither the conservator nor any partner, associate or other lawyer or limited license legal practitioner practicing in association with the conservator shall:

1. make any recommendation of counsel or limited license legal practitioner to any client identified as a result of the conservatorship in connection with any matter identified during the conservatorship; or
2. represent such a client in connection with:
  - A. any matter identified during the conservatorship; or
  - B. any other matter during or for a period of three (3) years after the conclusion of the conservatorship.

**(g) – (h) [[no change]]**

## VI. UNAUTHORIZED PRACTICE OF LAW

### Rule 75. Jurisdiction

**(a) Jurisdiction.** This court has jurisdiction over any person engaged in the unauthorized practice of law pursuant to Rule 31(b) ~~31(a)~~ of these rules or any entity providing legal services contrary to the requirements of Rule 31.1(c). Proceedings against non-members or alternative business structures may also be instituted pursuant to Rules 47 through 60, and such proceedings may be concurrent with proceedings under this rule and Rules 76 through 80, Ariz.R.S.Ct.

**(b) Definitions.** The following definitions shall apply in unauthorized practice of law proceedings.

1. All definitions in Rules 31(b); 31.1(c); and 41(a) ~~31(a)(2)~~ shall apply.
2. “Bar counsel” [[No change]]
3. “Charge” means any allegation of misconduct or incapacity of a lawyer, limited license legal practitioner, or alternative business structure or misconduct or incident of unauthorized practice of law brought to the attention of the state bar.
4. “Committee” [[No change]]
5. “Complainant” means a person who initiates a charge or later joins in a charge to the state bar against a non-lawyer or alternative business structure regarding the unauthorized practice of law. The state bar or any bar counsel may be a complainant.
6. “Complaint” through 11. “Record” [[No change]]
12. “Respondent” is any person or alternative business structure subject to the jurisdiction of the court against whom a charge is received for violation of these rules.
13. “State bar” through 16. “Unauthorized practice of law proceeding” [[No change]]

## **Rule 76. Grounds for Sanctions, Sanctions and Implementation**

### **(a) Grounds for Sanctions.** Grounds for sanctions include the following:

1. Any act found to constitute the unauthorized practice of law pursuant to Rule ~~31~~ 31.2.

2. Willful disobedience or violation of a court ruling or order requiring the individual or alternative business structure to do or forbear to do an act connected with the unauthorized practice of law.

3. [[No change]]

### **(b) Sanctions and Dispositions.**

1. *Agreement to Cease and Desist*. [[No change]]

2. *Cease and Desist Order*. [[No change]]

3. *Injunction*. [[No change]]

4. *Civil Contempt*. [[No change]]

5. *Restitution*. [[No change]]

6. *Civil Penalty*. The superior court may order a civil penalty up to \$25,000 against every respondent upon whom another sanction is imposed. Civil penalties against an alternative business structure shall be deposited in the Alternative Business Structure Fund. Civil fines against a limited license legal practitioner shall be deposited in the fund established by the supreme court for that program.

7. *Costs and Expenses*. [[No change to text]]

### **(c) Implementation of Cease and Desist Sanction.** [[No change]]